# Virtue



# 1ACs

## 1AC

### Framework

#### **I value morality.**

#### **Moral evaluations are characterized by a split between the deontic and the aretaic. Deontic theories ascribe moral descriptions to actions, while aretaic theories ascribe moral descriptions to agents. The deontic can be deduced from the aretaic, but not vice versa—that means the aretaic is conceptually prior.**

Gryz ’11 (Jarek, Prof in the Department of Electrical Engineering and Computer Science at York University, “On the Relationship Between the Aretaic and the Deontic,” *Ethical Theory and Moral Practice*, 2011, 14:493–501, Springer) OS

The way we use words ‘good/bad’ and ‘right/wrong’ seems to support the above claims. Goodness and badness come in degrees, hence we have words like ‘better’ and ‘worse’; we lack similar terms for deontically evaluated actions. The availability of degree terms in the former case seems to indicate the presence of many criteria used in evaluation; an all-or- nothing choice, implied by the use of ‘right’ or ‘wrong’, suggests focusing on only one quantum quality.12 But fine-grainedness is not only a property of particular aretaic terms, the entire aretaic vocabulary is infinitely richer and allows us to draw much finer distinctions in act-evaluations than the deontic vocabulary. For example, by saying that something is praiseworthy we imply that it deserves approval or favor: we assess it higher when we say that it is admirable, since then it should be also respected and honored. The meaning of the word ‘praiseworthy’ can be quite well conveyed by saying, that it is something that ought to be done, or that it is the right (in Ross’s understanding of ‘right’) thing to do: yet expressing the word ‘admirable’ in deontic vocabulary seems just impossible. From what has been said so far one can derive an encouraging conclusion for the advocates of attractive ethics. Sheer richness and fine-grainedness of aretaic vocabulary seems to be a good reason for believing that all that can be said in deontic terms can be equally well expressed in aretaic terms. This is not to say, however, that we can produce a translation manual which would provide us with a general method of expressing deontic notions in terms of aretaic ones for all possible cases. In particular, it does not seem possible, as we hope to have shown, to substitute ‘good’ for ‘right’ or ‘deplorable’ for ‘wrong’. The relation between the aretaic and the deontic seems to be somewhat similar to the relation between the physical and the mental in the mind-body problem. We can claim that deontic is supervenient on the aretaic without committing ourselves to the idea of complete definitional reduction. In other words, we may allow for token identity (each particular action can have an aretaic description that perfectly matches the deontic one) and deny the possibility of type identity (that there is aretaic sentence true of all and only the actions having some deontic property). If this analogy is correct then the idea of definitional reduction of the deontic to the aretaic, and in particular, Stocker’s identification of rightness and goodness, is doomed. But we can still pursue a more modest goal. If our task is just to substitute every particular deontic evaluation with an aretaic one, there are no logical reasons that would make it impossible (it would not work, of course, in the opposite direction). From that perspective, attractive ethical theories seem to be much better off than the imperative ones.

#### This commits us to the task of determining the intrinsic qualities of a good actor. However, we cannot do so purely through academic reflection. Ethical knowledge must be derived from something that is itself intrinsically ethical in quality, because a) the search for ethical truth itself presupposes forms of ethical values, i.e. the value of good scholarship, honesty, etc., and b) explanatory accounts result in descriptive and not prescriptive claims about the world, since they merely explain the way things are.

#### The result is a virtue paradigm: ethics is a developmental social phenomenon that is established via inculcation. This does not presuppose descriptive normative claims.

Reader 2k (Reader, Soren. [Late Professor of Philosophy, Durham University] “New Directions in Ethics: Naturalism, Reasons, and Virtue.” Ethical Theory and Moral Practice, Vol. 3, No. 4, Dec. 2000.)

Virtue is a free disposition to act in certain ways under certain conditions. Virtue ethics claims that what is to count as a good action or what is a good outcome is conceptually dependent on claims about the virtue of an agent. How is this dependence supposed to work? Where those after an explanatory account seek a conceptual connection with something like a normative 'in itself,’ virtue ethicists instead explore the concrete dependence of moral activity on the possibility of learning from already virtuous agents. They hold that the key to moral rationality is found in moral education. Ethics begins with the apprentice moral agent: the child, or the foreigner, or the damaged person in rehabilitation are all examples. These beginner-agents learn from the experienced, wise moral agent by copying, by mimicking in their actions the actions of the virtuous agent. This mimicking, or 'going on in the same way', does not presuppose that the learner agent acquires any representations of how the world is (i.e., beliefs), nor that they acquire the ability to report on or provide justifications for what they do. Virtue is learned by cottoning on to virtuous ways of doing things, going on to do the same, then going on to do the same in new ways, once they have mastered the skill.16 The way virtue and character is supposed to be basic here is simply displayed in the analogy: there is and can be nothing 'behind' the expertise of the phronimos which can explain or justify it (any more than there is anything 'behind' the expertise of the doctor or the navigator, to use Aristotle's examples at NE 1104b7-l 1). Of course, plenty more can be said about it, and shortcuts can be found to aid the learn ing of those who have already mastered other skills (so competent rule-fol lowers can learn from being given rules, just as competent grammarians can learn a new language from the grammar). But we should not confuse what it is possible to say about the skill of being moral, with what constitutes it.

#### **Virtues are characteristics and habits that assist agents in fulfilling their purposes. Because all action must contain an aim that seeks to achieve the ultimate good, the fulfillment of said purpose is Eudaimonia, or human flourishing, the constitutive function of an agent.**

Athanassoulis n.d. (Nafsika, Keele University, “Virtue Ethics,” IEP, <http://www.iep.utm.edu/virtue/#SH2a>) OS

"Eudaimonia" is an Aristotelian term loosely (and inadequately) translated as happiness. To understand its role in virtue ethics we look to Aristotle's function argument. Aristotle recognizes that actions are not pointless because they have an aim. Every action aims at some good. For example, the doctor's vaccination of the baby aims at the baby's health, the English tennis player Tim Henman works on his serve so that he can win Wimbledon, and so on. Furthermore, some things are done for their own sake (ends in themselves) and some things are done for the sake of other things (means to other ends). Aristotle claims that all the things that are ends in themselves also contribute to a wider end, an end that is the greatest good of all. That good is eudaimonia. Eudaimonia is happiness, contentment, and fulfillment; it's the name of the best kind of life, which is an end in itself and a means to live and fare well.

#### That’s key—value is relational—there is no such thing as “good” in the abstract, only being a good something—being a good human is primary, since it precedes all other identities.

Geach ’56 (Peter T Geach, philosopher, “Good and Evil,” http://fair-use.org/peter-t-geach/good-and-evil)

I can now state my first thesis about good and evil : ' **good' and 'bad' are always** (Is) **attributive**, not predicative, **adjectives**. This is fairly clear about 'bad' because 'bad' is something like an alienans adjective; [for example] we cannot safely predicate of a bad A what we predicate of an A, any more than we can predicate of a forged banknote or a putative father what we predicate of a banknote or a father. We actually call forged money' bad' ; and we cannot infer e.g. that because food supports life bad food supports life. For' good' the point is not so clear at first sight, since ' good' is not alienans-whatever holds true of an A as such holds true of a good A. But **consider the contrast in such a pair of phrases as ' red car ' and' good car '. I could ascertain that a distant object is a red car because I can see it is red and a keener-sighted but colour-blind friend can see it is a car; there is no such possibility of ascertaining that a thing is a good car by pooling independent information that it is good and that it is a car. This sort of example shows that ' good' like ' bad' is essentially an attributive adjective.** Even when ' good ' or ' bad ' stands by itself as a predicate, and is thus grammatically predicative, **some substantive has to be understood; there is no such thing as being just good or bad, there is only being a good or bad so-and-so.** (If I say that something is a good or bad thing, either 'thing' is a mere proxy for a more descriptive noun to be supplied from the context ; or else I am trying to use ' good ' or 'bad' predicatively, and its being grammatically attributive is a mere disguise. The latter attempt is, on my thesis, illegitimate.)

#### Thus the standard is promoting virtue. Because states are legal fictions created by individuals to ensure proper conditions, they have the obligation to promote a virtuous society. This is not util—a) Util is not aretaic in that it doesn’t describe character, b) virtue ethics is not hedonistic, and c) not consequentialist—end states themselves don’t have value, and we don’t aim to maximize.

#### Prefer additionally:

#### Rule-following paradox—rules are indeterminate absent communal interpretation, which means a) ethics can’t be rule-based, and b) theories divorced from social development fail.

McGinnis ’06 (Nicholas McGinnis 6 PhD, successfully defended his dissertation, On Philosophical Intuitions, at the University of Western Ontario in the Spring of 2015 under the supervision of Dr. Robert Stainton. He was born in Montreal, Canada and attended Concordia University where he completed both his B.A. (honours) and M.A. in philosophy. He is a member of the Rotman Institute of Science and Values. His work focuses on philosophy of language, experimental philosophy, metaphysics, and non-classical logic, “Wittgenstein's Influence on the Development of Virtue Ethics”, A Thesis In The Department of Philosophy Presented in Partial Fulfillment of the Requirements for the Degree of Master of Arts in Philosophy at Concordia University Montreal, Quebec, Canada, August 2006) OS

McDowell begins with Wittgenstein's example at §185 of PI (though, for Wittgenstein, this was a return to a similar thought-experiment at §143), where a pupil is asked to extend a series (through an order which has the form +n, in this case +2), so as to produce 2, 4, 6, 8, etc. McDowell comments that we have a tendency to view iterations of this task as a type of psychological mechanism, analogous to the movement of some otherwise inert physical object being guided by an underlying structure—the common metaphor is that of rails—necessarily towards the correct answer (McDowell 1998: 58).34 This view is, McDowell notes, rather suspect. The first problem is that any rule-following behaviour or statement of understanding a rule ("I am doing this")— such as that of adding 2—is in a sense underdetermined: the potential behaviour that comes under the jurisdiction of rule is infinite (in this case we have the set of natural numbers) while at any given time we've seen, or followed ourselves, only a finite fraction of these possible cases. What evidence we have for the picture of rule-following as a set of 'rails' cannot dismiss the possibility that in the future behaviour will "diverge from what we could count as correct" (ibid., 59). Wittgenstein's example of this, also used by McDowell, is a person who continues the +2 series after reaching 1000 thusly: 1004, 1008, 1012... and does not understand that he has made a mistake, believing that he was applying the rule correctly. At this point, as Wittgenstein notes, it is no use to merely say: "But can't you see?" (cf. PI §185)—for he sees differently: a rabbit instead of a duck, as with the old optical illusion. Perhaps he believed that to correctly apply the rule, he was to "add 2 up to 1000, 4 up to 2000, 6 up to 3000, and so on", and does not admit or understand that there was a mistake (ibid., 59). The constant possibility of such behaviour runs against the supposition that to follow a rule is to be guided by these inexorable 'rails'. Concludes McDowell: "The pictured state, then, always transcends the grounds on which it is allegedly postulated" (ibid., 59). The point of these considerations is not a sceptical one, as is sometimes argued, nor to undermine confidence in our speech acts; rather it is only to remove an illusory ground we sometimes ascribe to meaning, a picture in which "the steps are really already taken, even before I take them in writing or orally or in thought" (ibid., 59). The connection between the objection sketched by McDowell earlier on and Wittgenstein's argument is clear. The 'major premise', formulated as a single universal principle, is meant to anticipate all cases of application, "as only the act of meaning can anticipate reality" (PI §188). It is precisely because of this attributed ability that it can serve as major premise, much like an algebraic formula is thought to be able to. The minor premise of the syllogism consists of the specific integers in play, which leads us, so the picture goes, necessarily to a specific conclusion, determined by the formula. Likewise, a "complete specification of the reason why the virtuous person acts as he does" is required as major premise, as mere perceptual sensitivity is insufficient to provide reasons for action (ibid., 54); recall McDowell's formulation of the objection— that both the virtuous and non-virtuous may share the same perception but fail to act in corresponding ways, showing virtue forms a composite state. The 'deliverances of sensitivity' (the 'integers'), to use McDowell's phrase, interact with something else—the universal principle and one's own volition (the 'formula'), to produce determinate answers. But this conception strikes McDowell as 'implausible', for cases would inevitably turn up in which a mechanical application of the rules would strike one as wrong—and not necessarily because one had changed one's mind; rather, one's mind on the matter was not susceptible of capture in any universal formula (ibid., 58). Wittgenstein's rule-following 'argument'—I use the term with some trepidation, for it would be somewhat of a mischaracterization to see it as a pure example of premise / conclusion philosophical dialectic—serves to dispel the notion that to act rationally is to follow the dictates of some externally-determined universal formula, and also the correlated notion that error consists in something analogous to mechanical breakdown. Consider the algebraic example. Are the steps to be taken for a series in some way 'determined'? For Wittgenstein, such a statement is perhaps referring to the fact that people are brought by their education (training) so to use the formula y = x², that they all work out the same value for y when they substitute the same number for x. [...] It may now be said: "The way the formula is meant determines which steps are taken." What is the criterion for the way the formula is meant? It is, for example, the kind of way we always use it, the way we are taught to use it. (PI §189; §190). When someone's behaviour diverges from what we would think counts as the correct answer in a given series, and does not 'see' the mistake at all, we lose the picture of rules as determining meaning in all possible application and cases. Grasping meaning is instead a function of being taught proper application of symbols. Yet for all this we do not lose confidence in our assertions or practices. Instead we see that it is largely spurious to make certain sorts of particularly stringent epistemological demands: that understanding a rule consists in letting one's mind be guided by some objectively present, mind-independent structure (such as Platonism concerning mathematics). McDowell's stressing of Wittgensteinian 'uncodifiability' connects with several of the critical aspects of virtue ethics explored in the last chapter. The point of the 'rulefollowing' argument was that what counts as rational or consistent behaviour is not wholly determined by external facts which the mind somehow grasps via abstract contemplation; this is the vanity of previous moral theories which most authors of virtue ethics attack, though they focus on different targets, after different fashions. Anscombe's criticism of Kant, recall, explicitly made use of uncodifiability: "no theoretically adequate provision can be made for exceptional circumstances," she writes, rendering it impossible to construct the appropriate type of stipulation necessary to govern descriptions of actions (Anscombe 1999: 27; 29). This is akin to McDowell's presentation of Wittgenstein; in both, there lurks the realization that concept-application is not governed by the picture of 'rails'. The relevant description of, say, a lie—Anscombe's example35 — is not something which can be adequately captured in what McDowell terms a 'universal formula', for considerations identical to those of the +2 series, as are the consequences. Speaking of the objection's equal application to utilitarianism: "any action can be so described as to make it fall under a variety of principles of utility (as I shall say for short) if it fall under any" (ibid., 28). The general nature of the problem under Anscombe's consideration here is so similar to Wittgenstein it even seems strange she would not quote him or bring the connection out. Perhaps the connection was taken to be entirely self-evident. Another link between the rule-following argument and the critiques of virtue ethics is the argument that 'pleasure', or any other good, is a heterogeneous, polycentric concept (an argument we presented through Nussbaum's writings on the topic). The opposite view is that of pleasure as a unitary and measurable object; but as the rule-following argument applies across the board, it is clear that what counts as pleasure can no more be determined from 'outside' than what counts as a lie, or what counts as following the +2 rule. The attraction to a certain species of moral theory lies precisely in the claim that we can define what 'pleasure' is, or 'lies' are, in a peculiarly binding and inexorable way, so as to 'solve' problems with no rational dissent possible from the one answer determined by the formula. If we find Wittgenstein's rule-following argument convincing, however, we should not view such projects as likely to succeed: for it seems rather unlikely, if not downright impossible, that the definitions upon which the projects ride will be found— that they are indeed such things as can be 'found'. Yet despite these rather difficult conclusions there is no reason to embrace scepticism or lose confidence in the grounds of our assertions. Where does our confidence come from, if not from determinate rules and principles, lying outside of us, as it were? According to McDowell—approvingly quoting Stanley Cavell—nothing but our 'shared forms of life', a 'whirl of organism' that consists of common discursive practices, 'routes of interest' and patterns of recognized similarity: a 'congruence of subjectivities' (McDowell 1998: 60-61). We may choose to explain the correct extension of a number series in syllogistic terms, but this should not lead us to the conclusion that the operation moves independently of our forms of life. Writes Wittgenstein about the tendency towards this sort of conclusion, "It is as if we could grasp the whole use of the word in a flash." Like what e.g.? ... But have you a model for this? No. It is just that this expression suggests itself to us. As the result of the crossing of different pictures [...] You have no model of this superlative fact, but you are seduced into using a super-expression. (PI §193). This 'flash' of insight is the seductive illusion that we mount ourselves on some external rails when we grasp the use of a rule, such as 'add 2', because we have the sensation that, despite the underdetermined nature of the picture, we see application of algebra or words into infinity. This 'strange' sensation leads us to postulate the superlative picture. Writes Wittgenstein, But there is nothing astonishing, nothing queer, about what happens. It becomes queer when we are led to think that the future development must in some way already be present in the act of grasping the use and yet isn't present. [...] Where is the connexion effected between the sense of the expression 'Let's play a game of chess' and all the rules of the game?—Well, in the list of rules of the game, in the teaching of it, in the day-to-day practice of playing. ( PI §197). The ability to project use into indefinite future context turns therefore not on some mysterious underlying mechanism churning out 'appropriate' answers, but rather on the taught practices of linguistic communities and creative decisions made within them.36 Hence the thought that calculations within the deductive paradigm ought to be 'automatically compelling' somehow above and beyond forms of life is a method of avoiding Wittgenstein's difficult conclusions about the grounds of our rationality. For McDowell, the correct standpoint, or 'cure' to this (no doubt following Wittgenstein's notion of 'therapy'), instead is to give up the idea that philosophical thought, about the sorts of practice in question, should be undertaken at some external standpoint, outside our immersion in our familiar forms of life. (McDowell 1998: 63) This is the path to the Neurathian solution advocated by Hursthouse, as we saw in the last chapter. It may seem at first glance that Hursthouse's use of eudaimonia as a naturalistic ground for her brand of virtue ethics runs counter to the line of argument presented here, in that explicit reference to human flourishing may serve as major premise in a syllogism of the form criticized by McDowell here. But Hursthouse never intends, and indeed explicitly denies, that her naturalism is meant to be convincing outside of an acquired ethical outlook, i.e. a form of life (Hursthouse 1999: 166). Such a move will seem utterly unconvincing without the background assumed by appreciation of the rather deep implications of the rule-following argument, which includes McDowell's 'cure' for the seduction by the deductive paradigm; paradigm which, as McDowell concludes his interpretation of Wittgenstein, is a deeply unsatisfactory model even standing by itself: Pupils do acquire a capacity to go on, without further advice, to novel instances. Impressed by the sparseness of the teaching, we find this remarkable. But assimilation to the deductive paradigm leaves it no less remarkable. The assimilation replaces the question "How is it that the pupil, given that sparse instruction, goes on to new instances in the right away?" with the question "How is it that the pupil, given that sparse instruction, divines from it a universal formula with the right deductive powers?". The second question is, if anything, less tractable. (McDowell 1998: 64) The first question is quite tractable, by contrast. The boundary conditions created by both human nature and shared forms of life provide sufficient explanatory content to explain extension to novel circumstance; whereas it is difficult to see how a pupil can make the 'leap of divination' McDowell views as necessary to answer the second.37 Furthermore, this is not to suggest that there are unbridgeable chasms created by forms of life or that one cannot be brought to 'see' things correctly if they have grasped usage differently. But these are topics to be addressed in the next chapter. For now, I have argued that virtue ethics—of which I chose Hursthouse's version as an exemplar—crucially depends on this interpretation of Wittgenstein's rule-following argument and the consequences drawn from it.

#### Consequences are irrelevant to the aff, but I will defend plan: The United States federal government will prohibit the ownership of private handguns and implement a reimbursement policy to collect handguns currently in circulation. I reserve the right to clarify.

Etzioni and Hellend ’92 [Amitai Etzioni and Steven Hellend, “The Case for Domestic Disarmament”, The Communitarian Network, 1992]

PROPOSED HANDGUN LEGISLATION Prohibits the importation, exportation, manufacture, sale, purchase, transfer, receipt, possession, or transportation of handguns. Establishes a "grace period" during which time handguns may be turned into any law enforcement agency with impunity and for reimbursement at the greater of either $25 or the fair market value of the gun. Allows an exception for: \* agencies of federal, state, or local government (military and law enforcement) \* collectors of antique (nonserviceable) firearms \* federally-licensed handgun sporting clubs; the clubs must be founded for bonafide target or sport shooting; must maintain possession and control of the handguns used by its members; must have procedures and facilities for keeping the handguns secure when not in a local law enforcement facility; and may not have as members persons whose membership would violate state of federal law \* federally-licensed professional security guard services [operating with similar conditions as those set for handgun clubs] Sets up penalties of up to $5,000, or up to 5 years imprisonment, or both, for violation of the provisions of the Act. We suggest the following friendly amendment to Senator Chafee's proposed legislation: Extend the above prohibitions to ammunition for handguns, allow for the exceptions to apply also to ammunition, and establish a "grace period" during which those who turn over ammunition to any law enforcement agency would be reimbursed at the fair market value.

### Contention

#### **Gun ownership creates a cynical worldview that promotes intellectual and social vices, causes racism, kills compassion, and inhibits communal bonds that are key to flourishing**

Trivigno ’13 (Franco, philosophy professor at Marquette University, “Guns and Virtue: The Virtue Ethical Case against Gun Carrying,” *Public Affairs Quarterly* Vol. No. 4 October 2013, <https://www.academia.edu/4778227/Guns_and_Virtue_The_Virtue_Ethical_Case_against_Gun_Carrying_Public_Affairs_Quarterly_2013_>) OS

In this section, I turn my attention to the core belief that underlies the willingness to use a gun in self-defense, namely, that becoming the victim of a violent crime is likely enough to warrant and to maintain the habit of gun carrying. A complex set of beliefs seems to be involved, which amount to a kind of worldview. On this worldview, violent crime is likely because the world is a dangerous place filled with unscrupulous people. As I mention above, arguments for increased gun carrying often use anecdotes of crime in order to put the audience in the "proper" emotional position. The cognitive purpose of these anecdotes is to generate the "proper" account of the world, that is, as a fundamentally unsafe place in which responsible people need to carry a gun in order to protect themselves from dangerous criminals. As with the emotions, the habit of gun carrying will build on and reinforce these thoughts about the world repeatedly and non-consciously. As I will show, this worldview hinders one's ability to develop virtues and to obtain objective goods necessary to eudaimonia. Habitual, repeated non-conscious mental representations involving aspects of this worldview may encourage the development of both moral and intellectual vices. This is because the beliefs one has about the world affect one's dispositions toward other people in a way that affects one's judgments about them one way or the other. In a recent study, it was found that people who wield guns are more likely to perceive that other people are wielding guns; the authors conclude that "by virtue of affording a perceiver the opportunity to use a gun, he or she was more likely to classify objects in a scene as a gun and, as a result, to engage in threat-induced behavior.'' In short, carrying a gun may produce a perceptual bias that verifies and reinforces previously held ideas about the dangerousness of the world. To the extent that one's adherence to the worldview is inflexible and lacks nuance, one will lack intellectual virtues, which are, very roughly, those dispositions that enable us to track the truth. This worldview is warranted or justified only under certain conditions, namely, those in which the worldview accurately portrays the state of the world. Accurately construing an area as unsafe requires, at minimum, that there be a relatively high likelihood that one will become the victim of violent crime. But if carrying a gun increases the chances that one will perceive others as threats, then the gun carrier seems subject to a kind of self-reinforcing illusion. Gun carriers do seem to believe that crime is above average in their neighborhoods, but, given their subjection to the above illusion, it is not clear that their belief is always warranted. Consider that, unlike typical criminals or crime victims, permit holders tend to be "married, well-educated, middle-aged, upper-middle- class Whites." Their perceptions of the level of crime seem to rely on certain racial biases: "Perceived crime . . . responds to the proximity of blacks." In other words, it seems that the closer one is to an African American neighborhood, the greater one perceives the risk of crime, even for one who is not likely to find oneself in that neighborhood. Thus, carriers may be using a morally dubious heuristic device (about African Americans) that serves to overstate the degree to which they are in danger. Prior victimization, which is clearly relevant to the question of safety, seems also to produce a bias, that is, it leads one to overstate the crime rate in one's surroundings. To the extent that the repeated representation of aspects of this worldview makes it impervious to contravening evidence, one develops certain intellectual vices. In the grip of the worldview, one might develop a kind of intellectual rigidity, or narrow-mindedness, about the feasible options for understanding safety-relevant evidence. One may exhibit prejudice or partiality in interpreting evidence about, for example, certain people's typical motivations. In short, one may become intellectually blind to contravening evidence. To the extent that the worldview encourages anti-social dispositions, one may lack moral virtues and develop moral vices. For example, one may become suspicious when encountering strangers, cynical about their motives, scornful about their concerns, insensitive to their suffering, and contemptuous of them in general. Empirical evidence on the attitudes of gun owners reveals that they are more likely to endorse punitive beliefs about criminals, including support for the death penalty, and gun carriers "were more likely [than non-carrying owners] to believe that the courts are not harsh enough." Furthermore, the use of "the proximity of a young black population as an indicator of crime" seems to rely on highly problematic racial attitudes, suggesting that African Americans are particularly dangerous. It is not difficult to see how certain moral virtues will be harder to develop, given these beliefs. Take, for example, the virtue of compassion, which one might roughly define as the recognition of the suffering of others coupled with the motivation to alleviate it. Someone with punitive views will have a harder time seeing the suffering of a criminal as cause for concern, much less a cause for action. This is problematic, since the suffering of criminals should, at least sometimes, be a cause for both concern and action. If one is blind to [unconcerned with] this suffering, and to the suffering of African Americans, on the highly problematic assumption that they might be criminals, then one will not be able to embody the virtue of compassion. In addition to hindering virtue, this worldview may cut off, or seriously diminish, the possibility of eudaimonia by blocking one's access to certain objective goods. One may, of course, be right that she lives in a dangerous neighborhood in which crime is likely; and one may, of course, avoid the biases and stereotyping that seem to be associated with these views (though the bias research suggests that this is harder than one might think). Even if one is right about one's neighborhood and living conditions, the profound insecurity and alienation from one's community would seem to make virtue extremely difficult and flourishing impossible. Indeed, having strong community bonds seems crucial both for one's willingness to act virtuously to benefit others and for one's overall sense of well-being. In addition (as I will show in the next section), this worldview seems to serve to weaken trust and the community bonds that help to make a society flourish.

#### **Guns inhibit social trust, which is a necessary virtue, and harms relationships that are key to flourishing—we control uniqueness**

Trivigno ’13 (Franco, philosophy professor at Marquette University, “Guns and Virtue: The Virtue Ethical Case against Gun Carrying,” *Public Affairs Quarterly* Vol. No. 4 October 2013, <https://www.academia.edu/4778227/Guns_and_Virtue_The_Virtue_Ethical_Case_against_Gun_Carrying_Public_Affairs_Quarterly_2013_>) OS

Habitual gun carrying seems not only to manifest social distrust, but to contribute to it as well, thus further damaging the community. It is a manifestation of social distrust in that the motivation for gun carrying assumes at the start that there are dangerous and untrustworthy people out there who are likely enough to attack that one is warranted in carrying a concealed weapon. Habitual gun carrying contributes to social distrust because the agent will not participate in society as a trusting member, refuses to accept a certain level of vulnerability, denies that trust is warranted, and makes no effort to cultivate trust. As I noted above, carrying a gun produces a bias that increases the likelihood that one perceives others to be armed. Research suggests that this bias is not distributed evenly: it seems that people are more likely to perceive African Americans (than others) as armed. In short, one ends up distrusting certain socially or racially identifiable groups of people more than others. Since a number of social, cooperative goods are enabled by social trust, it is no small observation that gun carrying erodes it. Social trust seems to stand in a causal relationship with institutional trust, or trust in institutions. Some theories of social trust indicate that efficient institutions produce social trust and that socially trusting individuals contribute to efficient institutions. One sees this manifested in the research on gun carrying. Gun carriers are more likely to believe that the police are ineffective in protecting them and that they therefore need to depend on themselves. The relationship between a lack of trust in society's protection measures and the perceived likelihood of crime are interdependent. In a telling observation, Lizotte and Bourda claim that "[e]ven in the context of a high crime rate, large-scale reductions in gun ownership for protection could be brought about by convincing individuals that the criminal justice system can and will protect them.” This shows that trust in institutional effectiveness and social trust are related, and it seems that at least some gun carriers are responsive to the perception of increased institutional effectiveness. However, it suggests that gun carrying also contributes to the perception of institutional ineffectiveness, such that social distrust and distrust in institutions seem mutually reinforcing. The question of whether social distrust is warranted, or what level of social trust is warranted, is a tricky one precisely because of the difficulties with establishing the conditions for reasonable trust. One can imagine that some gun carriers will be impervious to evidence about institutional effectiveness. If accepting vulnerability is a necessary condition of social trust, then the person who thinks that vulnerability is per se unacceptable will not be capable of trusting. Being violently attacked is still possible, one might retort, and therefore carrying a gun is still a reasonable precaution. For such a person, social trust is ruled out from the outset. As we have seen, gun carriers are subject to certain biases, which may lead them to overstate the likelihood of crime, and there may or may not be a misfit between the beliefs and the facts. In addition, whether or not one's estimation of the threat is accurate, one person's threshold for acceptable vulnerability might differ wildly from another's. I leave open the possibility that the level of social distrust might be accurate and sufficiently low to justify gun carrying. One might reasonably ask, Why take the risk involved in trusting? The answer is that trust is important both for the well-functioning of societies and for the virtue and flourishing of individuals. Aristotle explicitly connects the kind of society one lives in with one's prospects for virtue and eudaimonia. For Aristotle, what grounds this connection is the recognition that human beings are social animals that are born into and live in already established social communities. These communities are, or can be, various: family, neighborhood, school, work, city, country, etc. Since we are essentially social, our flourishing is going to have to happen within and amongst these communities. These effects may be seen both at the interpersonal and communal level. Though there is little research on the relationship between social trust and interpersonal trust, at least one study suggests that social trust, or the propensity to trust strangers, affects relational trust, such that a relationship between two people with very high propensities to trust strangers results in the highest degree of interpersonal trust. If this is right, then social distrust will adversely affect interpersonal trust, and this will at least affect personal relationships in a negative manner. Being a better, more virtuous friend and spouse may be thus linked to social trust. On the communal level, the value of social trust is that, if it is reasonable, it can allow for a greater level of communal cooperation, which can enable the development of virtues and increase not only ones own potential for virtue and flourishing, but that of one's fellow citizens as well. Uslaner endorses the portrait of "trusters as ideal citizens" who are tolerant, active in the community, help to solve collective action problems, give to charity, and volunteer; as a result of these, they tend to feel good about themselves. If this is right, then social trust may itself be a virtue. By sustaining the mental habits that undergird the willingness to kill in self-defense, one risks developing a disposition to social distrust, and as I hope to have shown, this involves potential harmful consequences for virtue and flourishing. Even in the case where social distrust is warranted, it is not morally desirable because it diminishes one's prospects for flourishing. Several studies have indicated that social trust is on the decline in the United States and has been for some time. If this is the new normal, as it were, then it would seem that, from the neo-Aristotelian perspective, we are accepting a state of society that is increasingly inhibiting its citizens' ability to flourish. The solution, as it were, would be to work to build up social trust such that people do not feel the need to arm themselves and are able to flourish, not to normalize an armed citizenry and just accept the kind of society that Aristotle would regard as uncivilized.

#### Guns result in dehumanization by constructing criminality as subhuman—that causes vice and kills empathy which is necessary for several virtues like compassion

Trivigno ’13 (Franco, philosophy professor at Marquette University, “Guns and Virtue: The Virtue Ethical Case against Gun Carrying,” *Public Affairs Quarterly* Vol. No. 4 October 2013, <https://www.academia.edu/4778227/Guns_and_Virtue_The_Virtue_Ethical_Case_against_Gun_Carrying_Public_Affairs_Quarterly_2013_>) OS

This dehumanization can be seen as operative in two ways. First, the discourse surrounding justification for gun carrying refers to "criminals," not as individual moral subjects, but as subhuman threats to the safety of moral agents. As I note above, these attitudes are likely to be mediated by social identities, that is, one will be more likely to dehumanize African Americans. Thus, the "criminal" is likely to have a certain "look." Consider Lott's description of what criminals are like: To put it bluntly, criminals are not typical citizens. As is well known, young males from their mid-teens to mid-thirties commit a disproportionate share of crime, but even this categorization can be substantially narrowed. We know that criminals tend to have low IQs as well as atypical personalities. For example, delinquents generally tend to be more 'assertive, unafraid, aggressive, uncontrolled, unconventional, extroverted and poorly socialized'. . . Other evidence indicates that criminals tend to be more impulsive and put relatively little weight on future events. Finally, we cannot ignore the unfortunate fact that crime (particularly violent crime and especially murder) is disproportionately committed against blacks by blacks." This picture assimilates criminals and psychopaths, who lack empathy and as a matter of fact have no qualms about harming other humans. The criminal is thus so deeply different and "other" that he—and it is almost always a "he"—is simply not afforded the same moral consideration as "regular" humans. Collins claims that this picture of the criminal, while picking up on certain statistically relevant correlations, is grossly overdrawn and unhelpful for predicting violence. Second, in order for handgun carrying to be effective, one must be willing-or think one is willing-to use deadly force should it become necessary. In On Killing, Grossman argues that successfully training someone to become willing to kill involves several distancing mechanisms, all of which involve dehumanizing the potential target. The distancing mechanisms include "cultural distance, such as racial and ethnic differences"; "moral distance, which takes into consideration the kind of intense belief in moral superiority"; and "social distance, which considers the impact of practice in thinking of a particular class as less than human." These distancing mechanisms are meant to overcome our strong resistance to serious violence, and this resistance is a significant feature of our moral psychological makeup." In short, the "psychological mechanisms that enable killing bypass the resistance by dehumanizing, in one way or another, the potential "target." In order to become willing to kill another human being-even in self-defense--it is psychologically enabling to see that person as sub- or non-human. The core point here is that to the extent that one is successful, on one's own, at distancing oneself from others in preparing to commit serious violence, one is thereby and to that extent morally harming oneself. One does so precisely by compromising one's own ability to recognize the humanity in others, thereby undermining one's capacity for empathic concern. A reduced capacity for empathic concern will affect all sorts of other-regarding virtues, since they depend on perceiving the other as a fellow human. One may become callous and insensitive, when confronted with the suffering of these others; one may become cruel and malicious in what one says about them and hopes for them: one may become spiteful and vindictive when confronted with wrongdoing that "they" have committed. Conversely, several virtuous character traits may become harder to develop and impossible to fully realize: compassion, sympathy, benevolence, and kindness come to mind. A practiced attitude of dehumanization toward a certain set of people, the violent criminals, whoever one imagines them to be, is likely to have deleterious effects on moral deliberation and moral perception, which may end up fostering vicious character traits and inhibiting the development of virtuous character traits. In short, one will not be able to afford others the proper amount of moral consideration. To recognize basic human dignity from a virtue ethical perspective means that one affords others due consideration in one's moral outlook and deliberations about what to do. One must perceive others and their goals, values, and ideals as morally relevant and salient features of one's own moral situation. One needs to see them as having some basic moral value. The deleterious effects of gun carrying on moral deliberation and moral perception can be seen as operative on two levels. First, such dehumanization cannot be done with sufficient fineness of grain to avoid dehumanizing those who are only superficially similar to the violent criminals. Since one's notion of the "criminal" is likely to be mediated by social identity and thus drawn in an overly broad way, one will develop bad habits of deliberation with respect to those who may "look like" one of "the criminals." These mechanisms are also likely to be operative at the non-conscious level, that is, one may not be aware that one is, in moral deliberation, implicitly denying the humanity of those who are only superficially similar to the criminal. One's moral perception may be affected in such a way that one simply fails to see certain groups of people as human moral agents. Second, even if one's notion of the criminal is accurate and somehow manages to avoid undue generalization, it is clear that the criminal deserves some moral consideration. The dehumanization that enables violence would seem to go too far in the denial of moral consideration to the criminal. This may be manifested in expressed attitudes of indifference to what happens to criminals, how they are or have been treated, or, as we have seen, the belief that they ought to be treated more harshly or even killed. One may implicitly (or explicitly) deliberate on the assumption that it is wrong to care what happens to criminals. This assumption may hamper efforts of moral deliberation and may be manifested in a failure to see criminals as human moral agents.

#### **And, a full ban of ownership is key—possession is relevant independent of usage**

Wallace n.d. (Jonathan, attorney, “The Ethics of Guns,” <http://www.spectacle.org/798/jethic.html>) OS

All of these are examples of the ways in which we are affected by the tools we create. Something already in us predisposes us to certain tools; people are drawn for complicated reasons to computers, carpentry, or medical technology. But once we select a tool, we adapt our thinking to it in significant ways; it affects our world-view, and the particulars of our moral analysis, ever after. A tool is an instrumentality for the accomplishment of a particular goal. My jeep permits me to get to my favorite fishing pond in a few minutes, instead of a forty minute walk (uncomfortable carrying fishing gear). Scuba gear permits me to break the bounds of gravity while visiting places otherwise inaccessible to me. A corollary of this: tools are associated with action. A tool which is kept "just in case" is an unrealized potentiality; through-out human history, we have almost always created tools in order to use them, not to have them ready. If cars were considered emergency vehicles, to be kept parked in the driveway against the possibility of a disaster requiring evacuation, we would naturally long to drive them. Guns are tools. Certain of them are tools customized for the hunting of animals; people who select these weapons have a predisposition to hunt, and the fulfillment realized with the aid of such a tool involves getting a deer and enjoying the venison. I have never hunted, but I enjoy eating venision, and I raise no issue, legal, practical or ethical, with this particular instance of tool use. Other guns are designed for one major purpose only: the destruction of human beings. At least some of the people who keep these weapons around have thoughts about using them to kill humans. These thoughts may take a number of forms; the most common one certainly would be the use of the weapon in self defense. But "self defense" is a notoriously elastic term, and it is a human nature always to stretch anything elastic. Some number of gun owners certainly secretly hope that life will put them in a situation where they can use their weapon for its intended purpose; and a much smaller number has actually sought these circumstances, as did the man in Los Angeles who picked a fight with some graffiti artists, then shot one. To put it as bluntly as I can, I think that the ownership of handguns is connected in some people with a worldview which divides our fellows into categories of people who can and cannot be shot with them. An unused handgun, kept for contingencies, is an unrealized potentiality similar to scuba gear kept in the closet or an undriven jeep. Yes, I can plink at cans or take the gun to the range; I can also breathe on the scuba tank in my living room or in the swimming pool, or drive the jeep in the driveway. Humans want to use the tools they love, and the complete fulfillment of the handgun involves the killing of another human being. Each of us starts life as a collection of potentialities: thoughts, impulses, leanings. Along the road we make choices, practical and ethical ones, to pursue certain pathways and renounce others. Not every big, powerful person becomes a boxer. Not everything we are good at makes us happy. Nor is everything which makes us happy good for us. In general, the gun advocates I have debated seem unwilling to admit that there are any ethical implications of the ownership or use of handguns. A more thorough analysis of the motives for our choices, and their consequences, will not necessarily lead us to renounce these choices. I drive my jeep in the backwoods, even though I understand the negatives and ironies of this decision. Self-analysis should, however, lead to more responsible use of the tool than denial and willful ignorance will. A handgun owner who knows that on some level he desires to shoot someone may be less likely to. Believing that guns are a good in themselves dispenses us from ever having to conduct this analysis. (So does belief that guns are an evil in themselves.) Before picking up any tool, a human should ask, "Why do I want this? What will I use it for? What will I become through the use of it?" I don't see these extremely important issues playing any significant role in the dialog of gun advocates, who of course are largely on the defensive in their public statements. Perhaps this discussion exists, in private, among friends or within the gun-owning family. If it does, it would be a good thing to let the world know about it. Today, gun advocates are identified more with statements like "Extremism in the defense of liberty is no vice" than "Self-knowledge in the pursuit of tool use is a virtue".

## 1AC No Underview

### Framework

#### **I value morality.**

#### **Moral evaluations are characterized by a split between the deontic and the aretaic. Deontic theories ascribe moral descriptions to actions, while aretaic theories ascribe moral descriptions to agents. The deontic can be deduced from the aretaic, but not vice versa—that means the aretaic is conceptually prior.**

Gryz ’11 (Jarek Gryz, Prof in the Department of Electrical Engineering and Computer Science at York University, “On the Relationship Between the Aretaic and the Deontic,” *Ethical Theory and Moral Practice*, 2011, 14:493–501, Springer) OS

The way we use words ‘good/bad’ and ‘right/wrong’ seems to support the above claims. Goodness and badness come in degrees, hence we have words like ‘better’ and ‘worse’; we lack similar terms for deontically evaluated actions. The availability of degree terms in the former case seems to indicate the presence of many criteria used in evaluation; an all-or- nothing choice, implied by the use of ‘right’ or ‘wrong’, suggests focusing on only one quantum quality.12 But fine-grainedness is not only a property of particular aretaic terms, the entire aretaic vocabulary is infinitely richer and allows us to draw much finer distinctions in act-evaluations than the deontic vocabulary. For example, by saying that something is praiseworthy we imply that it deserves approval or favor: we assess it higher when we say that it is admirable, since then it should be also respected and honored. The meaning of the word ‘praiseworthy’ can be quite well conveyed by saying, that it is something that ought to be done, or that it is the right (in Ross’s understanding of ‘right’) thing to do: yet expressing the word ‘admirable’ in deontic vocabulary seems just impossible. From what has been said so far one can derive an encouraging conclusion for the advocates of attractive ethics. Sheer richness and fine-grainedness of aretaic vocabulary seems to be a good reason for believing that all that can be said in deontic terms can be equally well expressed in aretaic terms. This is not to say, however, that we can produce a translation manual which would provide us with a general method of expressing deontic notions in terms of aretaic ones for all possible cases. In particular, it does not seem possible, as we hope to have shown, to substitute ‘good’ for ‘right’ or ‘deplorable’ for ‘wrong’. The relation between the aretaic and the deontic seems to be somewhat similar to the relation between the physical and the mental in the mind-body problem. We can claim that deontic is supervenient on the aretaic without committing ourselves to the idea of complete definitional reduction. In other words, we may allow for token identity (each particular action can have an aretaic description that perfectly matches the deontic one) and deny the possibility of type identity (that there is aretaic sentence true of all and only the actions having some deontic property). If this analogy is correct then the idea of definitional reduction of the deontic to the aretaic, and in particular, Stocker’s identification of rightness and goodness, is doomed. But we can still pursue a more modest goal. If our task is just to substitute every particular deontic evaluation with an aretaic one, there are no logical reasons that would make it impossible (it would not work, of course, in the opposite direction). From that perspective, attractive ethical theories seem to be much better off than the imperative ones.

#### This commits us to the task of determining the intrinsic qualities of a good actor. However, we cannot do so purely through academic reflection. Ethical knowledge must be derived from something that is itself intrinsically ethical in quality, because a) the search for ethical truth itself presupposes forms of ethical values, i.e. the value of good scholarship, honesty, etc., and b) explanatory accounts result in descriptive and not prescriptive claims about the world, since they merely explain the way things are. Only a virtue paradigm solves this, because it views ethics as a developmental social phenomenon that is established via inculcation. This does not presuppose descriptive normative claims.

Reader 2k (Reader, Soren. [Late Professor of Philosophy, Durham University] “New Directions in Ethics: Naturalism, Reasons, and Virtue.” Ethical Theory and Moral Practice, Vol. 3, No. 4, Dec. 2000.)

Virtue is a free disposition to act in certain ways under certain conditions. Virtue ethics claims that what is to count as a good action or what is a good outcome is conceptually dependent on claims about the virtue of an agent. How is this dependence supposed to work? Where those after an explanatory account seek a conceptual connection with something like a normative 'in itself,’ virtue ethicists instead explore the concrete dependence of moral activity on the possibility of learning from already virtuous agents. They hold that the key to moral rationality is found in moral education. Ethics begins with the apprentice moral agent: the child, or the foreigner, or the damaged person in rehabilitation are all examples. These beginner-agents learn from the experienced, wise moral agent by copying, by mimicking in their actions the actions of the virtuous agent. This mimicking, or 'going on in the same way', does not presuppose that the learner agent acquires any representations of how the world is (i.e., beliefs), nor that they acquire the ability to report on or provide justifications for what they do. Virtue is learned by cottoning on to virtuous ways of doing things, going on to do the same, then going on to do the same in new ways, once they have mastered the skill.16 The way virtue and character is supposed to be basic here is simply displayed in the analogy: there is and can be nothing 'behind' the expertise of the phronimos which can explain or justify it (any more than there is anything 'behind' the expertise of the doctor or the navigator, to use Aristotle's examples at NE 1104b7-l 1). Of course, plenty more can be said about it, and shortcuts can be found to aid the learn ing of those who have already mastered other skills (so competent rule-fol lowers can learn from being given rules, just as competent grammarians can learn a new language from the grammar). But we should not confuse what it is possible to say about the skill of being moral, with what constitutes it.

#### **Virtues are characteristics and habits that assist agents in fulfilling their purposes. Because all action must contain an aim that seeks to achieve the ultimate good, the fulfillment of said purpose is Eudaimonia, or human flourishing, the constitutive function of an agent.**

Athanassoulis n.d. (Nafsika, Keele University, “Virtue Ethics,” IEP, <http://www.iep.utm.edu/virtue/#SH2a>) OS

"Eudaimonia" is an Aristotelian term loosely (and inadequately) translated as happiness. To understand its role in virtue ethics we look to Aristotle's function argument. Aristotle recognizes that actions are not pointless because they have an aim. Every action aims at some good. For example, the doctor's vaccination of the baby aims at the baby's health, the English tennis player Tim Henman works on his serve so that he can win Wimbledon, and so on. Furthermore, some things are done for their own sake (ends in themselves) and some things are done for the sake of other things (means to other ends). Aristotle claims that all the things that are ends in themselves also contribute to a wider end, an end that is the greatest good of all. That good is eudaimonia. Eudaimonia is happiness, contentment, and fulfillment; it's the name of the best kind of life, which is an end in itself and a means to live and fare well.

#### That’s key—value is relational—there is no such thing as “good” in the abstract, only being a good something—being a good human is primary, since it precedes all other identities.

Geach ’56 (Peter T Geach, philosopher, “Good and Evil,” http://fair-use.org/peter-t-geach/good-and-evil)

I can now state my first thesis about good and evil : ' **good' and 'bad' are always** (Is) **attributive**, not predicative, **adjectives**. This is fairly clear about 'bad' because 'bad' is something like an alienans adjective; [for example] we cannot safely predicate of a bad A what we predicate of an A, any more than we can predicate of a forged banknote or a putative father what we predicate of a banknote or a father. We actually call forged money' bad' ; and we cannot infer e.g. that because food supports life bad food supports life. For' good' the point is not so clear at first sight, since ' good' is not alienans-whatever holds true of an A as such holds true of a good A. But **consider the contrast in such a pair of phrases as ' red car ' and' good car '. I could ascertain that a distant object is a red car because I can see it is red and a keener-sighted but colour-blind friend can see it is a car; there is no such possibility of ascertaining that a thing is a good car by pooling independent information that it is good and that it is a car. This sort of example shows that ' good' like ' bad' is essentially an attributive adjective.** Even when ' good ' or ' bad ' stands by itself as a predicate, and is thus grammatically predicative, **some substantive has to be understood; there is no such thing as being just good or bad, there is only being a good or bad so-and-so.** (If I say that something is a good or bad thing, either 'thing' is a mere proxy for a more descriptive noun to be supplied from the context ; or else I am trying to use ' good ' or 'bad' predicatively, and its being grammatically attributive is a mere disguise. The latter attempt is, on my thesis, illegitimate.)

#### Thus the standard is promoting virtue. Because states are legal fictions created by individuals to ensure proper conditions, they have the obligation to promote a virtuous society. This is not util—a) util is not aretaic in that it doesn’t describe character, b) virtue ethics is not hedonistic, and c) not consequentialist—end states themselves don’t have value, and we don’t aim to maximize. Prefer additionally:

#### First, rule-following paradox—rules are indeterminate absent communal interpretation, which means a) ethics can’t be rule-based, and b) theories divorced from social development fail.

McGinnis ’06 (Nicholas McGinnis 6 PhD, successfully defended his dissertation, On Philosophical Intuitions, at the University of Western Ontario in the Spring of 2015 under the supervision of Dr. Robert Stainton. He was born in Montreal, Canada and attended Concordia University where he completed both his B.A. (honours) and M.A. in philosophy. He is a member of the Rotman Institute of Science and Values. His work focuses on philosophy of language, experimental philosophy, metaphysics, and non-classical logic, “Wittgenstein's Influence on the Development of Virtue Ethics”, A Thesis In The Department of Philosophy Presented in Partial Fulfillment of the Requirements for the Degree of Master of Arts in Philosophy at Concordia University Montreal, Quebec, Canada, August 2006) OS

McDowell begins with Wittgenstein's example at §185 of PI (though, for Wittgenstein, this was a return to a similar thought-experiment at §143), where a pupil is asked to extend a series (through an order which has the form +n, in this case +2), so as to produce 2, 4, 6, 8, etc. McDowell comments that we have a tendency to view iterations of this task as a type of psychological mechanism, analogous to the movement of some otherwise inert physical object being guided by an underlying structure—the common metaphor is that of rails—necessarily towards the correct answer (McDowell 1998: 58).34 This view is, McDowell notes, rather suspect. The first problem is that any rule-following behaviour or statement of understanding a rule ("I am doing this")— such as that of adding 2—is in a sense underdetermined: the potential behaviour that comes under the jurisdiction of rule is infinite (in this case we have the set of natural numbers) while at any given time we've seen, or followed ourselves, only a finite fraction of these possible cases. What evidence we have for the picture of rule-following as a set of 'rails' cannot dismiss the possibility that in the future behaviour will "diverge from what we could count as correct" (ibid., 59). Wittgenstein's example of this, also used by McDowell, is a person who continues the +2 series after reaching 1000 thusly: 1004, 1008, 1012... and does not understand that he has made a mistake, believing that he was applying the rule correctly. At this point, as Wittgenstein notes, it is no use to merely say: "But can't you see?" (cf. PI §185)—for he sees differently: a rabbit instead of a duck, as with the old optical illusion. Perhaps he believed that to correctly apply the rule, he was to "add 2 up to 1000, 4 up to 2000, 6 up to 3000, and so on", and does not admit or understand that there was a mistake (ibid., 59). The constant possibility of such behaviour runs against the supposition that to follow a rule is to be guided by these inexorable 'rails'. Concludes McDowell: "The pictured state, then, always transcends the grounds on which it is allegedly postulated" (ibid., 59). The point of these considerations is not a sceptical one, as is sometimes argued, nor to undermine confidence in our speech acts; rather it is only to remove an illusory ground we sometimes ascribe to meaning, a picture in which "the steps are really already taken, even before I take them in writing or orally or in thought" (ibid., 59). The connection between the objection sketched by McDowell earlier on and Wittgenstein's argument is clear. The 'major premise', formulated as a single universal principle, is meant to anticipate all cases of application, "as only the act of meaning can anticipate reality" (PI §188). It is precisely because of this attributed ability that it can serve as major premise, much like an algebraic formula is thought to be able to. The minor premise of the syllogism consists of the specific integers in play, which leads us, so the picture goes, necessarily to a specific conclusion, determined by the formula. Likewise, a "complete specification of the reason why the virtuous person acts as he does" is required as major premise, as mere perceptual sensitivity is insufficient to provide reasons for action (ibid., 54); recall McDowell's formulation of the objection— that both the virtuous and non-virtuous may share the same perception but fail to act in corresponding ways, showing virtue forms a composite state. The 'deliverances of sensitivity' (the 'integers'), to use McDowell's phrase, interact with something else—the universal principle and one's own volition (the 'formula'), to produce determinate answers. But this conception strikes McDowell as 'implausible', for cases would inevitably turn up in which a mechanical application of the rules would strike one as wrong—and not necessarily because one had changed one's mind; rather, one's mind on the matter was not susceptible of capture in any universal formula (ibid., 58). Wittgenstein's rule-following 'argument'—I use the term with some trepidation, for it would be somewhat of a mischaracterization to see it as a pure example of premise / conclusion philosophical dialectic—serves to dispel the notion that to act rationally is to follow the dictates of some externally-determined universal formula, and also the correlated notion that error consists in something analogous to mechanical breakdown. Consider the algebraic example. Are the steps to be taken for a series in some way 'determined'? For Wittgenstein, such a statement is perhaps referring to the fact that people are brought by their education (training) so to use the formula y = x², that they all work out the same value for y when they substitute the same number for x. [...] It may now be said: "The way the formula is meant determines which steps are taken." What is the criterion for the way the formula is meant? It is, for example, the kind of way we always use it, the way we are taught to use it. (PI §189; §190). When someone's behaviour diverges from what we would think counts as the correct answer in a given series, and does not 'see' the mistake at all, we lose the picture of rules as determining meaning in all possible application and cases. Grasping meaning is instead a function of being taught proper application of symbols. Yet for all this we do not lose confidence in our assertions or practices. Instead we see that it is largely spurious to make certain sorts of particularly stringent epistemological demands: that understanding a rule consists in letting one's mind be guided by some objectively present, mind-independent structure (such as Platonism concerning mathematics). McDowell's stressing of Wittgensteinian 'uncodifiability' connects with several of the critical aspects of virtue ethics explored in the last chapter. The point of the 'rulefollowing' argument was that what counts as rational or consistent behaviour is not wholly determined by external facts which the mind somehow grasps via abstract contemplation; this is the vanity of previous moral theories which most authors of virtue ethics attack, though they focus on different targets, after different fashions. Anscombe's criticism of Kant, recall, explicitly made use of uncodifiability: "no theoretically adequate provision can be made for exceptional circumstances," she writes, rendering it impossible to construct the appropriate type of stipulation necessary to govern descriptions of actions (Anscombe 1999: 27; 29). This is akin to McDowell's presentation of Wittgenstein; in both, there lurks the realization that concept-application is not governed by the picture of 'rails'. The relevant description of, say, a lie—Anscombe's example35 — is not something which can be adequately captured in what McDowell terms a 'universal formula', for considerations identical to those of the +2 series, as are the consequences. Speaking of the objection's equal application to utilitarianism: "any action can be so described as to make it fall under a variety of principles of utility (as I shall say for short) if it fall under any" (ibid., 28). The general nature of the problem under Anscombe's consideration here is so similar to Wittgenstein it even seems strange she would not quote him or bring the connection out. Perhaps the connection was taken to be entirely self-evident. Another link between the rule-following argument and the critiques of virtue ethics is the argument that 'pleasure', or any other good, is a heterogeneous, polycentric concept (an argument we presented through Nussbaum's writings on the topic). The opposite view is that of pleasure as a unitary and measurable object; but as the rule-following argument applies across the board, it is clear that what counts as pleasure can no more be determined from 'outside' than what counts as a lie, or what counts as following the +2 rule. The attraction to a certain species of moral theory lies precisely in the claim that we can define what 'pleasure' is, or 'lies' are, in a peculiarly binding and inexorable way, so as to 'solve' problems with no rational dissent possible from the one answer determined by the formula. If we find Wittgenstein's rule-following argument convincing, however, we should not view such projects as likely to succeed: for it seems rather unlikely, if not downright impossible, that the definitions upon which the projects ride will be found— that they are indeed such things as can be 'found'. Yet despite these rather difficult conclusions there is no reason to embrace scepticism or lose confidence in the grounds of our assertions. Where does our confidence come from, if not from determinate rules and principles, lying outside of us, as it were? According to McDowell—approvingly quoting Stanley Cavell—nothing but our 'shared forms of life', a 'whirl of organism' that consists of common discursive practices, 'routes of interest' and patterns of recognized similarity: a 'congruence of subjectivities' (McDowell 1998: 60-61). We may choose to explain the correct extension of a number series in syllogistic terms, but this should not lead us to the conclusion that the operation moves independently of our forms of life. Writes Wittgenstein about the tendency towards this sort of conclusion, "It is as if we could grasp the whole use of the word in a flash." Like what e.g.? ... But have you a model for this? No. It is just that this expression suggests itself to us. As the result of the crossing of different pictures [...] You have no model of this superlative fact, but you are seduced into using a super-expression. (PI §193). This 'flash' of insight is the seductive illusion that we mount ourselves on some external rails when we grasp the use of a rule, such as 'add 2', because we have the sensation that, despite the underdetermined nature of the picture, we see application of algebra or words into infinity. This 'strange' sensation leads us to postulate the superlative picture. Writes Wittgenstein, But there is nothing astonishing, nothing queer, about what happens. It becomes queer when we are led to think that the future development must in some way already be present in the act of grasping the use and yet isn't present. [...] Where is the connexion effected between the sense of the expression 'Let's play a game of chess' and all the rules of the game?—Well, in the list of rules of the game, in the teaching of it, in the day-to-day practice of playing. ( PI §197). The ability to project use into indefinite future context turns therefore not on some mysterious underlying mechanism churning out 'appropriate' answers, but rather on the taught practices of linguistic communities and creative decisions made within them.36 Hence the thought that calculations within the deductive paradigm ought to be 'automatically compelling' somehow above and beyond forms of life is a method of avoiding Wittgenstein's difficult conclusions about the grounds of our rationality. For McDowell, the correct standpoint, or 'cure' to this (no doubt following Wittgenstein's notion of 'therapy'), instead is to give up the idea that philosophical thought, about the sorts of practice in question, should be undertaken at some external standpoint, outside our immersion in our familiar forms of life. (McDowell 1998: 63) This is the path to the Neurathian solution advocated by Hursthouse, as we saw in the last chapter. It may seem at first glance that Hursthouse's use of eudaimonia as a naturalistic ground for her brand of virtue ethics runs counter to the line of argument presented here, in that explicit reference to human flourishing may serve as major premise in a syllogism of the form criticized by McDowell here. But Hursthouse never intends, and indeed explicitly denies, that her naturalism is meant to be convincing outside of an acquired ethical outlook, i.e. a form of life (Hursthouse 1999: 166). Such a move will seem utterly unconvincing without the background assumed by appreciation of the rather deep implications of the rule-following argument, which includes McDowell's 'cure' for the seduction by the deductive paradigm; paradigm which, as McDowell concludes his interpretation of Wittgenstein, is a deeply unsatisfactory model even standing by itself: Pupils do acquire a capacity to go on, without further advice, to novel instances. Impressed by the sparseness of the teaching, we find this remarkable. But assimilation to the deductive paradigm leaves it no less remarkable. The assimilation replaces the question "How is it that the pupil, given that sparse instruction, goes on to new instances in the right away?" with the question "How is it that the pupil, given that sparse instruction, divines from it a universal formula with the right deductive powers?". The second question is, if anything, less tractable. (McDowell 1998: 64) The first question is quite tractable, by contrast. The boundary conditions created by both human nature and shared forms of life provide sufficient explanatory content to explain extension to novel circumstance; whereas it is difficult to see how a pupil can make the 'leap of divination' McDowell views as necessary to answer the second.37 Furthermore, this is not to suggest that there are unbridgeable chasms created by forms of life or that one cannot be brought to 'see' things correctly if they have grasped usage differently. But these are topics to be addressed in the next chapter. For now, I have argued that virtue ethics—of which I chose Hursthouse's version as an exemplar—crucially depends on this interpretation of Wittgenstein's rule-following argument and the consequences drawn from it.

#### **Second, all practical reasoning requires an ultimate end to avoid infinite regress—that end is Eudaimonia.**

Russell ’13 (Daniel C. Russell, “Virtue ethics, happiness, and the good life,” *The Cambridge Companion to Virtue Ethics* pg. 8-9) OS bracketed for gendered language

Take the first idea first, beginning with the notion of doing some- thing for a reason. We don't do everything for a reason: someone might tap his foot while listening to music, but not for any reason. But think about someone making something: perhaps he begins with a long, flat piece of wood, cuts it into a certain shape, rounds one end of it into a handle, gives the other end of it a curved, flat face, and so on. We understand [their] reason for doing all of these things when we understand what [their] end is - in this case, making a cricket bat. Furthermore, we can ask about his reason for having that end; perhaps it is his job. We can keep going: someone employs him in order to sell cricket bats; people buy cricket bats to play cricket; and so on. In each case, we explain what people do in terms of their ends, and these ends fit together into a hierarchy, each end explained by the next end in this "chain" of ends. What do we mean by doing something "for the sake of" an end? The bat-making example gives one answer: we make a bat for the sake of selling it - making the bat is a means to that end. But that is only one answer; obviously, there are many things we do for their own sake, such as playing cricket. It is also possible to do something both for its own sake and for the sake of another end: for instance, a person might make bats both as a hobby and as a means of making some extra money. Or consider someone who plays a game of cricket for the sake of enjoying a sunny day. Obviously, playing cricket is not a means to the end of enjoying the day: the bat-maker thinks how to make the bat so that someone will want to buy it, but the player does not think how to play the next ball so that he can enjoy his day. Rather, playing cricket is for the sake of enjoying the day in the sense that it is a way of enjoying the day; and in order to enjoy a day of cricket, one must play cricket on its own terms, for its own sake.' And so on. The point is that we should interpret the "for the sake of" relation in these chains as broadly as the variety of our reasons demands. Now, each "chain" has to end somewhere. If it were infinitely long or looped back on itself, then we could never say what the whole chain was for the sake of, and practical reasoning couldn't halt anywhere; the thought that the whole enterprise might have a point couldn't withstand scrutiny} This is why practical reasoning requires a final end that all of the other ends in the chain are for the sake of, but which is not for the sake of anything else.

#### I defend the resolution as a general principle, but I am willing to specify a government or more specific type of ban. CX checks good: 1) Ensures substantive education since we’ll be able to avoid theory in a bunch of instances, which ensures debate about the topic, which is applicable to the real world, 2) mutually exclusive T interps means I’m forced to take a stance but if I have no idea which you would prefer I just do so arbitrarily so you shouldn’t punish me.

### Contention

#### **Gun ownership creates a cynical worldview that promotes intellectual and social vices, causes racism, kills compassion, and inhibits communal bonds that are key to flourishing**

Trivigno ’13 (Franco, philosophy professor at Marquette University, “Guns and Virtue: The Virtue Ethical Case against Gun Carrying,” *Public Affairs Quarterly* Vol. No. 4 October 2013, <https://www.academia.edu/4778227/Guns_and_Virtue_The_Virtue_Ethical_Case_against_Gun_Carrying_Public_Affairs_Quarterly_2013_>) OS

In this section, I turn my attention to the core belief that underlies the willingness to use a gun in self-defense, namely, that becoming the victim of a violent crime is likely enough to warrant and to maintain the habit of gun carrying. A complex set of beliefs seems to be involved, which amount to a kind of worldview. On this worldview, violent crime is likely because the world is a dangerous place filled with unscrupulous people. As I mention above, arguments for increased gun carrying often use anecdotes of crime in order to put the audience in the "proper" emotional position. The cognitive purpose of these anecdotes is to generate the "proper" account of the world, that is, as a fundamentally unsafe place in which responsible people need to carry a gun in order to protect themselves from dangerous criminals. As with the emotions, the habit of gun carrying will build on and reinforce these thoughts about the world repeatedly and non-consciously. As I will show, this worldview hinders one's ability to develop virtues and to obtain objective goods necessary to eudaimonia. Habitual, repeated non-conscious mental representations involving aspects of this worldview may encourage the development of both moral and intellectual vices. This is because the beliefs one has about the world affect one's dispositions toward other people in a way that affects one's judgments about them one way or the other. In a recent study, it was found that people who wield guns are more likely to perceive that other people are wielding guns; the authors conclude that "by virtue of affording a perceiver the opportunity to use a gun, he or she was more likely to classify objects in a scene as a gun and, as a result, to engage in threat-induced behavior.'' In short, carrying a gun may produce a perceptual bias that verifies and reinforces previously held ideas about the dangerousness of the world. To the extent that one's adherence to the worldview is inflexible and lacks nuance, one will lack intellectual virtues, which are, very roughly, those dispositions that enable us to track the truth. This worldview is warranted or justified only under certain conditions, namely, those in which the worldview accurately portrays the state of the world. Accurately construing an area as unsafe requires, at minimum, that there be a relatively high likelihood that one will become the victim of violent crime. But if carrying a gun increases the chances that one will perceive others as threats, then the gun carrier seems subject to a kind of self-reinforcing illusion. Gun carriers do seem to believe that crime is above average in their neighborhoods, but, given their subjection to the above illusion, it is not clear that their belief is always warranted. Consider that, unlike typical criminals or crime victims, permit holders tend to be "married, well-educated, middle-aged, upper-middle- class Whites." Their perceptions of the level of crime seem to rely on certain racial biases: "Perceived crime . . . responds to the proximity of blacks." In other words, it seems that the closer one is to an African American neighborhood, the greater one perceives the risk of crime, even for one who is not likely to find oneself in that neighborhood. Thus, carriers may be using a morally dubious heuristic device (about African Americans) that serves to overstate the degree to which they are in danger. Prior victimization, which is clearly relevant to the question of safety, seems also to produce a bias, that is, it leads one to overstate the crime rate in one's surroundings. To the extent that the repeated representation of aspects of this worldview makes it impervious to contravening evidence, one develops certain intellectual vices. In the grip of the worldview, one might develop a kind of intellectual rigidity, or narrow-mindedness, about the feasible options for understanding safety-relevant evidence. One may exhibit prejudice or partiality in interpreting evidence about, for example, certain people's typical motivations. In short, one may become intellectually blind to contravening evidence. To the extent that the worldview encourages anti-social dispositions, one may lack moral virtues and develop moral vices. For example, one may become suspicious when encountering strangers, cynical about their motives, scornful about their concerns, insensitive to their suffering, and contemptuous of them in general. Empirical evidence on the attitudes of gun owners reveals that they are more likely to endorse punitive beliefs about criminals, including support for the death penalty, and gun carriers "were more likely [than non-carrying owners] to believe that the courts are not harsh enough." Furthermore, the use of "the proximity of a young black population as an indicator of crime" seems to rely on highly problematic racial attitudes, suggesting that African Americans are particularly dangerous. It is not difficult to see how certain moral virtues will be harder to develop, given these beliefs. Take, for example, the virtue of compassion, which one might roughly define as the recognition of the suffering of others coupled with the motivation to alleviate it. Someone with punitive views will have a harder time seeing the suffering of a criminal as cause for concern, much less a cause for action. This is problematic, since the suffering of criminals should, at least sometimes, be a cause for both concern and action. If one is blind to [unconcerned with] this suffering, and to the suffering of African Americans, on the highly problematic assumption that they might be criminals, then one will not be able to embody the virtue of compassion. In addition to hindering virtue, this worldview may cut off, or seriously diminish, the possibility of eudaimonia by blocking one's access to certain objective goods. One may, of course, be right that she lives in a dangerous neighborhood in which crime is likely; and one may, of course, avoid the biases and stereotyping that seem to be associated with these views (though the bias research suggests that this is harder than one might think). Even if one is right about one's neighborhood and living conditions, the profound insecurity and alienation from one's community would seem to make virtue extremely difficult and flourishing impossible. Indeed, having strong community bonds seems crucial both for one's willingness to act virtuously to benefit others and for one's overall sense of well-being. In addition (as I will show in the next section), this worldview seems to serve to weaken trust and the community bonds that help to make a society flourish.

#### **Guns inhibit social trust, which is a necessary virtue, and harms relationships that are key to flourishing—we control uniqueness**

Trivigno ’13 (Franco, philosophy professor at Marquette University, “Guns and Virtue: The Virtue Ethical Case against Gun Carrying,” *Public Affairs Quarterly* Vol. No. 4 October 2013, <https://www.academia.edu/4778227/Guns_and_Virtue_The_Virtue_Ethical_Case_against_Gun_Carrying_Public_Affairs_Quarterly_2013_>) OS

Habitual gun carrying seems not only to manifest social distrust, but to contribute to it as well, thus further damaging the community. It is a manifestation of social distrust in that the motivation for gun carrying assumes at the start that there are dangerous and untrustworthy people out there who are likely enough to attack that one is warranted in carrying a concealed weapon. Habitual gun carrying contributes to social distrust because the agent will not participate in society as a trusting member, refuses to accept a certain level of vulnerability, denies that trust is warranted, and makes no effort to cultivate trust. As I noted above, carrying a gun produces a bias that increases the likelihood that one perceives others to be armed. Research suggests that this bias is not distributed evenly: it seems that people are more likely to perceive African Americans (than others) as armed. In short, one ends up distrusting certain socially or racially identifiable groups of people more than others. Since a number of social, cooperative goods are enabled by social trust, it is no small observation that gun carrying erodes it. Social trust seems to stand in a causal relationship with institutional trust, or trust in institutions. Some theories of social trust indicate that efficient institutions produce social trust and that socially trusting individuals contribute to efficient institutions. One sees this manifested in the research on gun carrying. Gun carriers are more likely to believe that the police are ineffective in protecting them and that they therefore need to depend on themselves. The relationship between a lack of trust in society's protection measures and the perceived likelihood of crime are interdependent. In a telling observation, Lizotte and Bourda claim that "[e]ven in the context of a high crime rate, large-scale reductions in gun ownership for protection could be brought about by convincing individuals that the criminal justice system can and will protect them.” This shows that trust in institutional effectiveness and social trust are related, and it seems that at least some gun carriers are responsive to the perception of increased institutional effectiveness. However, it suggests that gun carrying also contributes to the perception of institutional ineffectiveness, such that social distrust and distrust in institutions seem mutually reinforcing. The question of whether social distrust is warranted, or what level of social trust is warranted, is a tricky one precisely because of the difficulties with establishing the conditions for reasonable trust. One can imagine that some gun carriers will be impervious to evidence about institutional effectiveness. If accepting vulnerability is a necessary condition of social trust, then the person who thinks that vulnerability is per se unacceptable will not be capable of trusting. Being violently attacked is still possible, one might retort, and therefore carrying a gun is still a reasonable precaution. For such a person, social trust is ruled out from the outset. As we have seen, gun carriers are subject to certain biases, which may lead them to overstate the likelihood of crime, and there may or may not be a misfit between the beliefs and the facts. In addition, whether or not one's estimation of the threat is accurate, one person's threshold for acceptable vulnerability might differ wildly from another's. I leave open the possibility that the level of social distrust might be accurate and sufficiently low to justify gun carrying. One might reasonably ask, Why take the risk involved in trusting? The answer is that trust is important both for the well-functioning of societies and for the virtue and flourishing of individuals. Aristotle explicitly connects the kind of society one lives in with one's prospects for virtue and eudaimonia. For Aristotle, what grounds this connection is the recognition that human beings are social animals that are born into and live in already established social communities. These communities are, or can be, various: family, neighborhood, school, work, city, country, etc. Since we are essentially social, our flourishing is going to have to happen within and amongst these communities. These effects may be seen both at the interpersonal and communal level. Though there is little research on the relationship between social trust and interpersonal trust, at least one study suggests that social trust, or the propensity to trust strangers, affects relational trust, such that a relationship between two people with very high propensities to trust strangers results in the highest degree of interpersonal trust. If this is right, then social distrust will adversely affect interpersonal trust, and this will at least affect personal relationships in a negative manner. Being a better, more virtuous friend and spouse may be thus linked to social trust. On the communal level, the value of social trust is that, if it is reasonable, it can allow for a greater level of communal cooperation, which can enable the development of virtues and increase not only ones own potential for virtue and flourishing, but that of one's fellow citizens as well. Uslaner endorses the portrait of "trusters as ideal citizens" who are tolerant, active in the community, help to solve collective action problems, give to charity, and volunteer; as a result of these, they tend to feel good about themselves. If this is right, then social trust may itself be a virtue. By sustaining the mental habits that undergird the willingness to kill in self-defense, one risks developing a disposition to social distrust, and as I hope to have shown, this involves potential harmful consequences for virtue and flourishing. Even in the case where social distrust is warranted, it is not morally desirable because it diminishes one's prospects for flourishing. Several studies have indicated that social trust is on the decline in the United States and has been for some time. If this is the new normal, as it were, then it would seem that, from the neo-Aristotelian perspective, we are accepting a state of society that is increasingly inhibiting its citizens' ability to flourish. The solution, as it were, would be to work to build up social trust such that people do not feel the need to arm themselves and are able to flourish, not to normalize an armed citizenry and just accept the kind of society that Aristotle would regard as uncivilized.

#### Guns result in dehumanization by constructing criminality as subhuman—that causes vice and kills empathy which is necessary for several virtues like compassion

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This dehumanization can be seen as operative in two ways. First, the discourse surrounding justification for gun carrying refers to "criminals," not as individual moral subjects, but as subhuman threats to the safety of moral agents. As I note above, these attitudes are likely to be mediated by social identities, that is, one will be more likely to dehumanize African Americans. Thus, the "criminal" is likely to have a certain "look." Consider Lott's description of what criminals are like: To put it bluntly, criminals are not typical citizens. As is well known, young males from their mid-teens to mid-thirties commit a disproportionate share of crime, but even this categorization can be substantially narrowed. We know that criminals tend to have low IQs as well as atypical personalities. For example, delinquents generally tend to be more 'assertive, unafraid, aggressive, uncontrolled, unconventional, extroverted and poorly socialized'. . . Other evidence indicates that criminals tend to be more impulsive and put relatively little weight on future events. Finally, we cannot ignore the unfortunate fact that crime (particularly violent crime and especially murder) is disproportionately committed against blacks by blacks." This picture assimilates criminals and psychopaths, who lack empathy and as a matter of fact have no qualms about harming other humans. The criminal is thus so deeply different and "other" that he—and it is almost always a "he"—is simply not afforded the same moral consideration as "regular" humans. Collins claims that this picture of the criminal, while picking up on certain statistically relevant correlations, is grossly overdrawn and unhelpful for predicting violence. Second, in order for handgun carrying to be effective, one must be willing-or think one is willing-to use deadly force should it become necessary. In On Killing, Grossman argues that successfully training someone to become willing to kill involves several distancing mechanisms, all of which involve dehumanizing the potential target. The distancing mechanisms include "cultural distance, such as racial and ethnic differences"; "moral distance, which takes into consideration the kind of intense belief in moral superiority"; and "social distance, which considers the impact of practice in thinking of a particular class as less than human." These distancing mechanisms are meant to overcome our strong resistance to serious violence, and this resistance is a significant feature of our moral psychological makeup." In short, the "psychological mechanisms that enable killing bypass the resistance by dehumanizing, in one way or another, the potential "target." In order to become willing to kill another human being-even in self-defense--it is psychologically enabling to see that person as sub- or non-human. The core point here is that to the extent that one is successful, on one's own, at distancing oneself from others in preparing to commit serious violence, one is thereby and to that extent morally harming oneself. One does so precisely by compromising one's own ability to recognize the humanity in others, thereby undermining one's capacity for empathic concern. A reduced capacity for empathic concern will affect all sorts of other-regarding virtues, since they depend on perceiving the other as a fellow human. One may become callous and insensitive, when confronted with the suffering of these others; one may become cruel and malicious in what one says about them and hopes for them: one may become spiteful and vindictive when confronted with wrongdoing that "they" have committed. Conversely, several virtuous character traits may become harder to develop and impossible to fully realize: compassion, sympathy, benevolence, and kindness come to mind. A practiced attitude of dehumanization toward a certain set of people, the violent criminals, whoever one imagines them to be, is likely to have deleterious effects on moral deliberation and moral perception, which may end up fostering vicious character traits and inhibiting the development of virtuous character traits. In short, one will not be able to afford others the proper amount of moral consideration. To recognize basic human dignity from a virtue ethical perspective means that one affords others due consideration in one's moral outlook and deliberations about what to do. One must perceive others and their goals, values, and ideals as morally relevant and salient features of one's own moral situation. One needs to see them as having some basic moral value. The deleterious effects of gun carrying on moral deliberation and moral perception can be seen as operative on two levels. First, such dehumanization cannot be done with sufficient fineness of grain to avoid dehumanizing those who are only superficially similar to the violent criminals. Since one's notion of the "criminal" is likely to be mediated by social identity and thus drawn in an overly broad way, one will develop bad habits of deliberation with respect to those who may "look like" one of "the criminals." These mechanisms are also likely to be operative at the non-conscious level, that is, one may not be aware that one is, in moral deliberation, implicitly denying the humanity of those who are only superficially similar to the criminal. One's moral perception may be affected in such a way that one simply fails to see certain groups of people as human moral agents. Second, even if one's notion of the criminal is accurate and somehow manages to avoid undue generalization, it is clear that the criminal deserves some moral consideration. The dehumanization that enables violence would seem to go too far in the denial of moral consideration to the criminal. This may be manifested in expressed attitudes of indifference to what happens to criminals, how they are or have been treated, or, as we have seen, the belief that they ought to be treated more harshly or even killed. One may implicitly (or explicitly) deliberate on the assumption that it is wrong to care what happens to criminals. This assumption may hamper efforts of moral deliberation and may be manifested in a failure to see criminals as human moral agents.

#### Guns promote excess anger

Trivigno ’13 (Franco, philosophy professor at Marquette University, “Guns and Virtue: The Virtue Ethical Case against Gun Carrying,” *Public Affairs Quarterly* Vol. No. 4 October 2013, <https://www.academia.edu/4778227/Guns_and_Virtue_The_Virtue_Ethical_Case_against_Gun_Carrying_Public_Affairs_Quarterly_2013_>) OS

Gun carriers may fear being attacked or killed by an armed assailant. They may be angry that there are people who exempt themselves from the rules of society and who want to victimize others. The fact that armed criminals prey on weak members of society may cause gun carriers to feel outrage on behalf of the victims. Gun carriers may further resent the fact that their lives can be disrupted by such people. For all these reasons, gun carriers may begin to hate armed criminals and wish them harm. These emotions enable violence in that they generate significant emotional and moral distance between the gun carrier and the imagined assailant. This may be seen as parallel to the way in which militaries encourage combat troops to see the enemy as morally culpable in order to enable killing. In the case of gun carriers, the complex of emotions has to be powerful enough to generate and maintain an emotional willingness to threaten or to commit deadly violence. In other words, the emotional framework needs to persist long enough and with sufficient force in order to provide adequate motivation to support the habit. This is no easy task, and the achievement may come at a cost: the cultivation of resentment, for example, may make certain virtues, for example, forgivingness, harder to develop and may contribute to the development of certain vices, for example, vengefulness. Arguments in favor of gun carrying often begin with a tale of victimization in order to put the audience in the "proper" emotional position, from which one clearly sees that the feared and hated violent criminal can only be resisted via violence. In mimicking or taking up the emotional perspective of a victim, the gun carrier may be harming his own prospects for virtue precisely via an excess in these negative emotions. To clarify what I mean by "an excess," let me take up the example of anger. Habitual gun carrying may serve to prime us to experience anger. Priming is a psychological phenomenon that describes the way that some initial thoughts or cues are apt to bring about certain other related ideas or conceptual schema; in the case of anger and aggression, much research has demonstrated that "even seemingly innocuous encounters with material that has a hostile meaning can give rise to hostile ideas." The habit of carrying a gun may repeatedly trigger the non-conscious activation of thoughts and images-say, of armed violent criminals preying on old ladies--that are either associated with or partly constitutive of anger." Such repeated non-conscious activation may function as a primer for experiencing anger. In addition, the repeated exposure to the gun itself may also lead to increased anger. In a well-known and controversial study, researchers discovered what is known as the "weapons effect," that is, the increase in aggression that is experienced by those for whom guns have an aggressive meaning. In other words, the theory holds that people who associate guns with violence will experience an increase in aggression upon being exposed to a gun.

#### **Anger inhibits virtue and outweighs**

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The habit may thus lead to the development of bad character traits and hinder the development of objective goods. One may, in short, develop a vicious disposition with respect to anger, namely, irascibility. Not only will a chronically angry person have trouble developing certain other virtues, but the experience of anger is itself painful and can be damaging to one's relationships as well. Some studies have indicated that these negative emotions have a kind of mutually reinforcing relationship to one another. In addition, the negative affect, or bad feeling, that accompanies these emotions may serve to cause aggressive behavior. Assuming the aggressive behavior is inappropriate, in virtue ethical terms, the bad feeling that accompanies "negative" emotions may inhibit virtue or lead to vice. As I say above, anger is sometimes an appropriate response, but one can also see that anger is a dangerous emotion to be courting in oneself. It may be that, though anger is appropriate, it may nonetheless hinder eudaimonia-consider the case of oppressed peoples, who are justly angered by their oppression, yet are still blocked from eudaimonia in part because the appropriate level of anger is so high as to be morally debilitating. This means that, even in cases where the anger may be justified, if the level of anger is high enough, there are still good (virtue ethical) reasons to forestall one's anger or, at least, to attempt to moderate it.

#### **And, a full ban of ownership is key—possession is relevant independent of usage**

Wallace n.d. (Jonathan, attorney, “The Ethics of Guns,” <http://www.spectacle.org/798/jethic.html>) OS

All of these are examples of the ways in which we are affected by the tools we create. Something already in us predisposes us to certain tools; people are drawn for complicated reasons to computers, carpentry, or medical technology. But once we select a tool, we adapt our thinking to it in significant ways; it affects our world-view, and the particulars of our moral analysis, ever after. A tool is an instrumentality for the accomplishment of a particular goal. My jeep permits me to get to my favorite fishing pond in a few minutes, instead of a forty minute walk (uncomfortable carrying fishing gear). Scuba gear permits me to break the bounds of gravity while visiting places otherwise inaccessible to me. A corollary of this: tools are associated with action. A tool which is kept "just in case" is an unrealized potentiality; through-out human history, we have almost always created tools in order to use them, not to have them ready. If cars were considered emergency vehicles, to be kept parked in the driveway against the possibility of a disaster requiring evacuation, we would naturally long to drive them. Guns are tools. Certain of them are tools customized for the hunting of animals; people who select these weapons have a predisposition to hunt, and the fulfillment realized with the aid of such a tool involves getting a deer and enjoying the venison. I have never hunted, but I enjoy eating venision, and I raise no issue, legal, practical or ethical, with this particular instance of tool use. Other guns are designed for one major purpose only: the destruction of human beings. At least some of the people who keep these weapons around have thoughts about using them to kill humans. These thoughts may take a number of forms; the most common one certainly would be the use of the weapon in self defense. But "self defense" is a notoriously elastic term, and it is a human nature always to stretch anything elastic. Some number of gun owners certainly secretly hope that life will put them in a situation where they can use their weapon for its intended purpose; and a much smaller number has actually sought these circumstances, as did the man in Los Angeles who picked a fight with some graffiti artists, then shot one. To put it as bluntly as I can, I think that the ownership of handguns is connected in some people with a worldview which divides our fellows into categories of people who can and cannot be shot with them. An unused handgun, kept for contingencies, is an unrealized potentiality similar to scuba gear kept in the closet or an undriven jeep. Yes, I can plink at cans or take the gun to the range; I can also breathe on the scuba tank in my living room or in the swimming pool, or drive the jeep in the driveway. Humans want to use the tools they love, and the complete fulfillment of the handgun involves the killing of another human being. Each of us starts life as a collection of potentialities: thoughts, impulses, leanings. Along the road we make choices, practical and ethical ones, to pursue certain pathways and renounce others. Not every big, powerful person becomes a boxer. Not everything we are good at makes us happy. Nor is everything which makes us happy good for us. In general, the gun advocates I have debated seem unwilling to admit that there are any ethical implications of the ownership or use of handguns. A more thorough analysis of the motives for our choices, and their consequences, will not necessarily lead us to renounce these choices. I drive my jeep in the backwoods, even though I understand the negatives and ironies of this decision. Self-analysis should, however, lead to more responsible use of the tool than denial and willful ignorance will. A handgun owner who knows that on some level he desires to shoot someone may be less likely to. Believing that guns are a good in themselves dispenses us from ever having to conduct this analysis. (So does belief that guns are an evil in themselves.) Before picking up any tool, a human should ask, "Why do I want this? What will I use it for? What will I become through the use of it?" I don't see these extremely important issues playing any significant role in the dialog of gun advocates, who of course are largely on the defensive in their public statements. Perhaps this discussion exists, in private, among friends or within the gun-owning family. If it does, it would be a good thing to let the world know about it. Today, gun advocates are identified more with statements like "Extremism in the defense of liberty is no vice" than "Self-knowledge in the pursuit of tool use is a virtue".

## **Underviews**

### TL

#### First, CX checks on all T and theory on the advocacy. a) Ensures substantive education since we’ll be able to avoid theory in a bunch of instances, which ensures debate about the topic, which is applicable to the real world, b) mutually exclusive interps means I’m forced to take a stance but if I have no idea which you would prefer I just do so arbitrarily so you shouldn’t punish me.

#### Second, if I win a counter-interpretation to T or theory, vote aff. Time-pressed rebuttals means the aff needs the ability to collapse to theory in order to overcome the inequity of the speech times. Otherwise the 2NR would also moot a large portion of the 1AR by kicking theory. Prefer time skew to other links to fairness because it’s quantifiable and verifiable.

#### Third, reasonability and drop the argument on T. The briteline is if it’s been disclosed, defends a ban everywhere in the US for all guns and all individuals, provides link and impact turn ground, and has a CX concession spike. Prefer: a) Only the aff has the burden of meeting topicality, so it’s nonreciprocal to hold it to the same standards as other theory, b) mutually exclusive legitimate T interps—I have to choose one but you could read T no matter what which skews my strat—best possible interpretation is a bad standard.

#### Fourth, aff’s method is good—

#### To understand requires internal critique of assumptions, but for us to even understand the critique requires that it start within the framework of our original for-meanings. Thus critique and development of the aff is important, but it must start within the affs general methodology, otherwise no engagement or development is possible.

Gadamer ’60 (Hans-Georg Gadamer. Truth and Method. 1960. [modified for gendered language) bracketed for gender

What Heidegger is working out here is not primarily a prescription for the practice of understanding, but a description of the way interpretive understanding is achieved. The point of Heidegger's hermeneutical reflection is not so much to prove that there is a circle, as to show that this circle possesses an ontologically positive significance. The description as such will be obvious to every interpreter who knows what he is about.3 All correct interpretation must be on guard against arbitrary fancies and the limitations imposed by imperceptible habits of thought, and it must direct its gaze "on the things themselves" (which, in the case of the literary critic, are meaningful texts, which themselves are again concerned with objects). For the interpreter to let himself be guided by the things themselves is obviously not a matter of a single, "conscientious" decision, but is "the first, last, and constant task." For it is necessary to keep one's gaze fixed on the thing throughout all the constant distractions that originate in the interpreter himself. A person who is trying to understand a text is always projecting. [They] project a meaning for the text as a whole as soon as some initial meaning emerges in the text. Again, the initial meaning emerges only because [they are] reading the text with particular expectations in regard to a certain meaning. Working out this fore-projection, which is constantly revised in terms of what emerges as he penetrates into the meaning, is understanding what is there. This description is, of course, a rough abbreviation of the whole. The process that Heidegger describes is that every revision of the fore projection is capable of projecting before itself a new projection of meaning; rival projects can emerge side by side until it becomes clearer what the unity of meaning is; interpretation begins with fore-conceptions that are replaced by more suitable ones. This constant process of new projection constitutes the movement of understanding and interpretation. A person who is trying to understand is exposed to distraction from fore meanings that are not borne out by the things themselves. Working out appropriate projections, anticipatory in nature, to be confirmed "by the things" themselves, is the constant task of understanding. The only "objectivity" here is the confirmation of a fore-meaning in its being worked out. Indeed, what characterizes the arbitrariness of inappropriate fore meanings if not that they come to nothing in being worked out? But understanding realizes **its** full potential only when the fore-meanings that it begins with are not arbitrary. Thus it is quite right for the interpreter not to approach the text directly, relying solely on the fore-meaning already available to him, but rather explicitly to examine the legitimacy—i.e., the origin and validity—of the fore-meanings dwelling within him. This basic requirement must be seen as the radicalization of a procedure that we in fact exercise whenever we understand anything. Every text presents the task of not simply leaving our own linguistic usage unexamined—or in the case of a foreign language the usage that we are familiar with from writers or from daily intercourse. Rather, we regard our task as deriving our understanding of the text from the linguistic usage of the time or of the author. The question is, of course, how this general requirement can be fulfilled. Especially in the field of semantics we are confronted with the problem that our own use of language is unconscious. How do we discover that there is a difference between our own customary usage and that of the text? I think we must say that generally we do so in the experience of being pulled up short by the text. Either it does not yield any meaning at all or its meaning is not compatible with what we had expected. This is what brings us up short and alerts us to a possible difference in usage. Someone who speaks the same language as I do uses the words in the sense familiar to me—this is a general presupposition that can be questioned only in particular cases. The same thing is true in the case of a foreign language: we all think we have a standard knowledge of it and assume this standard usage when we are reading a text. What is true of fore-meanings that stem from usage, however, is equally true of the fore-meanings concerning content with which we read texts, and which make up our fore-understanding. Here too we may ask how we can break the spell of our own fore-meanings. There can, of course, be a general expectation that what the text says will fit perfectly with my own meanings and expectations. But what another person tells me, whether in conversation, letter, book, or whatever, is generally supposed to be his own and not my opinion; and this is what I am to take note of without necessarily having to share it. Yet this presupposition is not something that makes understanding easier, but harder, since the fore-meanings that determine my own understanding can go entirely unnoticed. If they give rise to misunderstandings, how can our misunderstandings of a text be perceived at all if there is nothing to contradict them? How can a text be protected against misunderstanding from the start? If we examine the situation more closely, however, we find that meanings cannot be understood in an arbitrary way. Just as we cannot continually misunderstand the use of a word without its affecting the meaning of the whole, so we cannot stick ~~blindly~~ to our own fore-meaning about the thing if we want to understand the meaning of another. **Of course** this does not mean that when we listen to someone or read a book we must forget all our fore-meanings concerning the content and all our own ideas. All that is asked is that we remain open to the meaning of the other person or text. But this openness always includes our situating the other meaning in relation to the whole of our own meanings or ourselves in relation to it. Now, the fact is that meanings represent a fluid multiplicity of possibilities (in comparison to the agreement presented by a language and a vocabulary), but within this multiplicity of what can be thought—i.e., of what a reader can find meaningful and hence expect to find—not everything is possible; and if a person fails to hear what the other person is really saying, he will not be able to fit what he has misunderstood into the range of his own various expectations of meaning. Thus there is a criterion here also. The hermeneutical task becomes of itself a questioning of things and is always in part so defined. This places hermeneutical work on a firm basis. A person trying To understand something will not resign himself from the start to relying on his own accidental fore-meanings, ignoring as consistently and stubbornly as possible the actual meaning of the text until the latter becomes so persistently audible that it breaks through what the interpreter imagines it to be. Rather, **a person trying to understand** a text is prepared for it to tell him something. That is why a hermeneutically trained consciousness **must be,** from the start, **sensitive to** the text's **alterity**. **But this kind of sensitivity involves neither "neutrality" with respect to content nor the extinction of one's self, but the foregrounding and appropriation of one's own fore-meanings and prejudices.** The important thing is to be aware of one's own bias, so that the text can present itself in all its otherness and thus assert its own truth against one's own fore-meanings.

#### Critical academia that doesn’t engage politics makes efficacy impossible – they re-inscribe the existing structure in a constant critique

Bryant 12 (levi, prof of philosophy at Collins college, Critique of the Academic Left, http://larvalsubjects.wordpress.com/2012/11/11/underpants-gnomes-a-critique-of-the-academic-left/)

The problem as I see it is that this is the worst sort of abstraction (in the Marxist sense) and wishful thinking. Within a Marxo-Hegelian context, a thought is abstract when it ignores all of the mediations in which a thing is embedded. For example, I understand a robust tree abstractly when I attribute its robustness, say, to its genetics alone, ignoring the complex relations to its soil, the air, sunshine, rainfall, etc., that also allowed it to grow robustly in this way. This is the sort of critique we’re always leveling against the neoliberals. They are abstract thinkers. In their doxa that individuals are entirely responsible for themselves and that they completely make themselves by pulling themselves up by their bootstraps, neoliberals ignore all the mediations belonging to the social and material context in which human beings develop that play a role in determining the vectors of their life. They ignore, for example, that George W. Bush grew up in a family that was highly connected to the world of business and government and that this gave him opportunities that someone living in a remote region of Alaska in a very different material infrastructure and set of family relations does not have. To think concretely is to engage in a cartography of these mediations, a mapping of these networks, from circumstance to circumstance (what I call an “onto-cartography”). It is to map assemblages, networks, or ecologies in the constitution of entities. Unfortunately, the academic left falls prey to its own form of abstraction. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignoring how networks, assemblages, structures, or regimes of attraction would have to be remade to create a workable alternative. Here I’m reminded by the “underpants gnomes” depicted in South Park: The underpants gnomes have a plan for achieving profit that goes like this: Phase 1: Collect Underpants Phase 2: ? Phase 3: Profit! They even have a catchy song to go with their work: Well this is sadly how it often is with the academic left. Our plan seems to be as follows:Phase 1: Ultra-Radical CritiquePhase 2: ?Phase 3: Revolution and complete social transformation!Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. Yet this is where everything begins to fall apart. Even though these critiques are often right, we express them in ways that only an academic with a PhD in critical theory and post-structural theory can understand. How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing? But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology than to undermine reigning ideology. These are the people that keep Rush Limbaugh in business. Well done! But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, and when we do, our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals? We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc. What are your proposals? How will you meet these problems? How will you navigate the existing mediations or semiotic and material features of infrastructure? Marx and Lenin had proposals. Do you? Have you even explored the cartography of the problem? Today we are so intellectually bankrupt on these points that we even have theorists speaking of events and acts and talking about a return to the old socialist party systems, ignoring the horror they generated, their failures, and not even proposing ways of avoiding the repetition of these horrors in a new system of organization. Who among our critical theorists is thinking seriously about how to build a distribution and production system that is responsive to the needs of global consumption, avoiding the problems of planned economy, ie., who is doing this in a way that gets notice in our circles? Who is addressing the problems of micro-fascism that arise with party systems (there’s a reason that it was the Negri & Hardt contingent, not the Badiou contingent that has been the heart of the occupy movement). At least the ecologists are thinking about these things in these terms because, well, they think ecologically. Sadly we need something more, a melding of the ecologists, the Marxists, and the anarchists. We’re not getting it yet though, as far as I can tell. Indeed, folks seem attracted to yet another critical paradigm, Laruelle. I would love, just for a moment, to hear a radical environmentalist talk about his ideal high school that would be academically sound. How would he provide for the energy needs of that school? How would he meet building codes in an environmentally sound way? How would she provide food for the students? What would be her plan for waste disposal? And most importantly, how would she navigate the school board, the state legislature, the federal government, and all the families of these students? What is your plan? What is your alternative? I think there are alternatives. I saw one that approached an alternative in Rotterdam. If you want to make a truly revolutionary contribution, this is where you should start. Why should anyone even bother listening to you if you aren’t proposing real plans? But we haven’t even gotten to that point. Instead we’re like underpants gnomes, saying “revolution is the answer!” without addressing any of the infrastructural questions of just how revolution is to be produced, what alternatives it would offer, and how we would concretely go about building those alternatives. Masturbation. “Underpants gnome” deserves to be a category in critical theory; a sort of synonym for self-congratulatory masturbation. We need less critique not because critique isn’t important or necessary– it is –but because we know the critiques, we know the problems. We’re intoxicated with critique because it’s easy and safe. We best every opponent with critique. We occupy a position of moral superiority with critique. But do we really do anything with critique? What we need today, more than ever, is composition or carpentry. Everyone knows something is wrong. Everyone knows this system is destructive and stacked against them. Even the Tea Party knows something is wrong with the economic system, despite having the wrong economic theory. None of us, however, are proposing alternatives. Instead we prefer to shout and denounce. Good luck with that.

#### Simulated legal debates are key to social transformation—creates a rallying point

Karl Klare, George J. & Kathleen Waters Matthews Distinguished University Professor, Northeastern University School of Law, “Teaching Local 1330—Reflections on Critical Legal Pedagogy,” (‘11). School of Law Faculty Publications. Paper 167. http://hdl.handle.net/2047/d20002528

This dialogue continues for awhile. **One ineffective theory after another is put on the table**. **Only once or twice in the decades I have taught this exercise have the students gotten close to a viable legal theory**. But this is not wasted time—lear**n**ing **occurs in** this phase of **the exercise**. **The point conveyed is** that **while law and morals/politics are inextricably intertwined**, **they are not the same**. For one thing, **lawyers have a distinct way of talking about and analyzing problems** that is characteristic of the legal culture of a given time and place. So-called “**legal reasoning**” **is actually a repertoire of conventional**, **culturally approved rhetorical moves and counter-moves** **deployed by lawyers** to **create an appearance of** the **legal necessity** of the results for which they contend. In addition, **good lawyers** actually **possess useful**, specialized **knowledge** not **generally** absorbed by **political theorists or movement** activists**. Legal training sensitizes us** **to the many complexities that arise whenever general norms and principles are implemented in the form of rules** of decision **or case applications**. **Lawyers know**, for example, that large stakes may turn on precisely how a right is defined, **who has standing** to vindicate it, **what remedies it provides, how the right is enforced** and in what venue(s), and so on. **We are not doing our jobs** properly **if we argue,** simply, “**what the defendant did was unjust and the plaintiff deserves relief**.” No one needs a lawyer to make the “what the defendant did was unjust” argument. As Lynd‟s account shows, the workers of Youngstown did make that argument in their own, eloquent words and through their collective resistance to the shut-downs. **If “what the defendant did was unjust” is all we have to offer, lawyers bring no added value to the table. Progressive students** sometimes **tell themselves** that **law is** basically **gobbledygook**, but that you can assist movements for social change if you learn how to spout the right gobbledygook. In this view of legal practice, “creativity” consists in identifying an appropriate technicality that helps your client. But in the Youngstown situation, we are way past that naïve view. There is no “technicality” that can win the case. In this setting, **a social justice lawyer must use the bits and pieces lying around to generate new legal knowledge and new legal theories**. And **these new theories must say something** **more than** “**my client deserves to win**” (although it is fine to commence one‟s research on the basis of that moral intuition). The class is beginning to get frustrated, and around now someone says “well, what do you expect? This is capitalism. There‟s no way the workers were going to win.” The “this-is-capitalism” (“TIC”) statement sometimes comes from the right, sometimes from the left, and usually from both ends of the spectrum but in different ways. The TIC statement precipitates another teachable moment. I begin by saying that we need to tease out exactly what the student means by TIC, as several interpretations are possible. For example, TIC might be a prediction of what contemporary courts are most likely to do. That is, TIC might be equivalent to saying that “it doesn‟t matter what theory you come up with; 999 US judges out of 1,000 would rule for U. S. Steel.”17 I allow that this is probably true, but not very revealing. The workers knew what the odds were before they launched the case. Even if doomed to fail, **a legal case may still make a contribution to social justice** if **the litigation creates a** focal point **of energy around which a community can mobilize, articulate moral and political claims, educate the wider public, and conduct political consciousness-raising**. And if there is political value in pursuing a case, we might as well make good legal arguments. On an alternative reading, the TIC observation is more ambitious than a mere prediction. It might be a claim that a capitalist society requires a legal structure of a certain kind, and that therefore professionally acceptable legal reasoning within capitalist legal regimes cannot produce a theory that interrogates the status quo beyond a certain point. Put another way, some outcomes are so foreign to the bedrock assumptions of private ownership that they cannot be reached by respectable legal reasoning. A good example of an outcome that is incompatible with capitalism, so the argument goes, is a court order interfering with U.S. Steel‟s decision to leave Youngstown. **This reading of the TIC comment embodies** **the idea** that **legal discourse** is **encased within a deeper**, extra-legal **structure given by requirements of** the social order (**capitalism**), **so that within professionally responsible legal argument** **the best lawyers in the world could not state a winning theory** in Local 1330. Ironically, **the left and the right in the class often share this belief.** I take both conservative and progressive students on about this. I insist that **the** **claim** that **our law is constrained by a** **rigid meta-logic of capitalism**—which curiously parallels the notion that legal outcomes are tightly constrained by legal reasoning—is just plain wrong. **Capitalist societies recognize** all **sorts of limitations** **on the rights of property owners**. Professor Singer‟s classic article catalogues a multitude of them.18 **The claim is not only false**, **it is a** dangerous **falsehood**. **To believe TIC in this sense is to limit in advance our aspirations for what social justice lawyering can accomplish**.

#### Engaging the state is productive—that means discussions of fiat are valuable. Statism is inevitable—innovative engagement can redirect power for emancipation.

Martin and Pierce ’13 Deborah G. Martin, Joseph Pierce, “Reconceptualizing Resistance: Residuals of the State and Democratic Radical Pluralism,” Antipode, Vol. 45, Issue 1, pp. 61-79, January 2013, DOI: 10.1111/j.1467-8330.2012.00980.x

The state offers a complex set of power structures against and with which resistance struggles (Holloway 2005; Scott 1988; Tormey 2004). Indeed, Holloway (2005) sees the state as so entrenched in power relations such that any resistance in or through the state is irrevocably bound up in its power logic. We acknowledge state power as always present, but not necessarily as monolithic.2 Despite—or perhaps because of— the power relations inherent in state frameworks, it is in part through laws and state regulations that activists can achieve reworked economic relations such as worker ownership, community banks, or cooperative housing (DeFilippis 2004). Hackworth explicitly acknowledges the possibility of a “neo-Keynesian” resistance which seeks to maintain relatively left-leaning state functions. Ultimately, though, he dismisses the resistive potential of such “neo-Keynesian” efforts, arguing that they have yielded “highly limited” successes (2007:191). We argue, however, that focusing on a state's ordering functions [the “police” component of states; as in Rancière (2004)] may provide a lens for examining how resistance through the state might destabilize or subvert neoliberal hegemony. We articulate the notion of residuals, or mechanisms of the state that can, or have historically, been wielded to mitigate inequalities of capitalism. In order to explore this arena as potentially productive for resistance, we first consider radical democracy as an already-articulated conceptualization of neoliberal resistance (Laclau and Mouffe 1985; Purcell 2008). Radical democracy does not seek to enroll the state in resistance to capital, per se, but recognizes the simultaneous co-presence of a hegemonic (but always changing) state, and anti-hegemonic resistances. Radical Democracy: Responding to Hegemony? The concept of radical democracy provides a framework for articulating where residual state apparatuses stand amidst the myriad layers of state functions, power, and hegemony (cf Laclau and Mouffe 1985; Rancière 2004). We imagine a politics in which the state –whether capitalist or not— is always hegemonic, and thus always produces an outside or excluded that is resistant to the hegemonic order. Radical democracy as initially described by Laclau and Mouffe (1985) offered a theory of resistance—although they did not use that term—to capitalist hegemonies.3 Their goal was to identify a leftist, anti-hegemonic political project that did not rely on unitary categories such as class, in response to the identity politics of the 1970s to 1990s and post-structural theorizing of the absence of any common (structural or cultural) basis for political transformation. The theory of radical democracy posits that any order is an hegemonic order; the post-Marxist socialist project of Laclau and Mouffe seeks to destabilize the hegemonies of capitalism and work towards more democratic articulations that marginalize capital, even as forms of inequality may persist (Laclau and Mouffe 1985). Nonetheless, they can seek more articulations, more opportunities for social protest and struggle over multiple inequalities. Each struggle will produce—or seek to produce—new orders, or hegemonies, but these will be unseated by other struggles; this process describes a democracy not defined solely by a capitalist hegemony. As scholars have increasingly taken neoliberalism as the distinct form of contemporary capitalism in response to which resistance is engaged, they have explored the ways that its intense market logic constricts possibilities for traditional political activism to engage the state: the state is responsive primarily to the logic of facilitating the work of private capital (Brenner and Theodore 2002; Harvey 2005; Mitchell 2003; Peck and Tickell 2002; Purcell 2008). At the same time, however, neoliberalism opens possibilities for resistance because of its internal contradictions (like all hegemonic orders); it simultaneously engages the state to facilitate capital expansion, yet rhetorically rejects the state as an active player in market logics (Leitner, Peck and Sheppard 2007; Peck and Tickell 2002; Purcell 2008). In doing so, the door is opened for alternative projects and resistances. Purcell (2008) takes up the ideals of radical democracy to focus on how it might provide specific means for resistance to neoliberalism. He wants to take the insights of Laclau and Mouffe and apply them to a particular, empirically informed framework for engaged activism that actually interrupts, if not challenges (and mostly not, in his examples), neoliberalism. As a result, Purcell engages specifically with the idea of “chains of equivalence”, which he defines as “entities [which] must simultaneously be both different and the same” (2008:74). Political coalitions and actors with shared or complimentary challenges to neoliberalism—but distinct in character, goals, and identities—form networks of equivalence [Purcell (2008), drawing from Hardt and Negri (2004) as well as Laclau and Mouffe (1985)]. Simply put, networks of equivalence conceptually allow for multiple groups with different specific interests and identities to band together to challenge the hegemony of neoliberal capitalism. The crucial point for Purcell, however, and the key radical pluralist component is that those groups can work together without having to resolve their internal differences; they need only share a common questioning of the neoliberal prioritizing of private capital. They share a struggle, then, for a different hegemony (Laclau and Mouffe 1985; Purcell 2008). In the battle against global finance, for example, activists with different specific interests (agriculture or trade policy or environmental protections) confront the state in the form of police in the streets of Seattle or Cancun (Wainwright 2007); their objections are to the state policies and agreements which support and create frameworks for world trade. In Purcell's (2008) networks of equivalence in Seattle, a similar, yet more spatially circumscribed network of neighborhood community activists, environmental activists, and a Native American tribe work together to challenge the terms of the environmental clean-up of toxins in and around the Duwamish River. Their target is the corporate interests being held responsible for actually funding the clean-up. The agent helping to hold the corporate interests accountable is the Federal Environmental Protection Agency (EPA). Seattle area environmental activists have been able to form a “chain of equivalence” with the EPA in the Duwamish clean-up in part by inserting themselves into an EPA framework that seeks stakeholder input through a participatory planning structure. The shared interests of the EPA and environmental activists are not obvious or easy to negotiate; the EPA, as a bureaucracy with many actors situated within the US federal system, is positioned as a complex institutional agent. But its particular mandate with regard to environmental protection offers a difficult relation to capital, one sometimes allied with non-state actors seeking limits to capital. Purcell's (2008) account of this case is insightful and engaging. We are highly sympathetic to his project of conceptualizing resistance and, by connection, a better, more complete democracy. But we differ over some of the details—essential details—of how best to enact successful resistances. In his case study of the Duwamish River clean up in Seattle, Purcell (2008) cites government policies as the factor enabling community resistance and involvement. His account is historically detailed—and necessarily so, for the complexities of the state have everything to do with the sedimented and sometimes inherently contradictory nature of its policies and procedures. In brief, he points to the EPA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also known as “Superfund”), and associated environmental laws as a sort of “environmental Keynesianism” that the federal government enacted in the decade of the 1970s (through 1980) (Purcell 2008:137). For Purcell, the neoliberalisation of these laws is evident in the increasing local devolution of governance authority over particular Superfund sites, including his case of the Duwamish River, resulting in “a proliferation of ad hoc and special purpose entities [that] increasingly carries out the everyday decision-making in Superfund cleanups” (2008:137). At the same time, however, Purcell (2008:138) acknowledges “that such ‘flexibilization’ … tends to create political opportunities that social movements can exploit”. We want to engage the idea that such flexible—or Keynesian—tools of the state are levers that can force the state to act in ways that might be counter to capital and in the service of greater democracy. In particular, we hope for a more complex, and, we expect, more practically productive conceptualization of resistance in relation to the state. While Purcell (2008:38, 183, note 2,2) acknowledges resistive possibilities from engagement with the state, he also notes that “the state is fully imbricated in the project of neoliberalization” (a point also made elsewhere; cf Harvey 2005; Holloway 2005; Mitchell 2003; Smith 1996; Wainwright 2007). We do not disagree with the basic contention that the state regulates and administers a hegemonic political economic order of and for capital. But the state is complex; following the persuasive arguments of Laclau and Mouffe (1985) and the example of the EPA in Purcell (2008), the state ought to be conceptualized like any actor: as multifaceted, with many possible subjectivities in relation to any particular conflict. This complexity offers the possibility that the state can be a tool for resistance, one we explore further in the rest of this paper.

#### The master’s tools can be used to dismantle the master’s house

James 09

Robin M. James, Assistant Professor in the Philosophy Department at the University of North Carolina at Charlotte, Spring 2009, Hypatia, available via Wiley online library

In these two instances of successful reappropriation of the master's tools—autonomy/universality and the guitar—the particular, real-world advantages offered by this technique might even require its adoption in instances where nothing else can “do” what it “does.” Indeed, to require that we categorically abandon the master's tools seems itself to be an overly abstract “ideal” that overlooks the often contradictory, historically overdetermined real-world contexts in which all ideas are made meaningful and in which actions unfold. In this world, the stage is already set in certain ways, and sometimes the best or only way to maneuver through its various obstacles requires the repurposing of what we find in/on this stage. If, as Coates's discussion demonstrates, power functions not only at the level of ideology, but also at the level of desire, then feminists cannot avoid engaging dominant structures of feeling and affective conventions (such as those at work in tonal harmony and/or rock music), because these cannot be persuaded or altered by “facts” or arguments (that is, ideological critique or demystification). Reading Butler and Peaches from the perspective of non-ideal theory demonstrates that a reappropriation of the “master's tools” is successful not only when it is more effective or affective than anything else, but also when its use of these tools problematizes or voids the master/slave or insider/outsider hierarchy itself. Under these conditions, the master's tools (for example, “autonomy,”“universality,” and playing the guitar) can indeed bring down the master's house.

#### The law is malleable—debating it is the only way to affect change

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the environments of other systems by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more pliant and responsive to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism. A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project. Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes: I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59 A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge. The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject. [Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62 Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity). What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests. Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany. This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7 There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order. Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities. Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition: In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80 Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82 It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them. 4. Conclusion Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law. This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. But the denial of their legitimacy or possibility moves us in the direction of authoritarian conceptions of law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to fully do so.

#### Intervening in the state is not weak reformism, but radical experimentation. Predetermining the government as an impenetrable structure repeats the worst of structuralist irresponsibility by needlessly bracketing leftist politics into irrelevance.

Connolly ’12 William E. Connolly, Krieger-Eisenhower Professor of Political Science at Johns Hopkins University, “Steps toward an Ecology of Late Capitalism,” Theory & Event, Vol. 15, Issue 1, 2012, Muse

A philosophy attending to the acceleration, expansion, irrationalities, interdependencies and fragilities of late capitalism suggests that we do not know with confidence, in advance of experimental action, just how far or fast changes in the systemic character of neoliberal capitalism can be made. The structures often seem solid and intractable, and indeed such a semblance may turn out to be true. Some may seem solid, infinitely absorptive, and intractable when they are in fact punctuated by hidden vulnerabilities, soft spots, uncertainties and potential lines of flight that become apparent as they are subjected to experimental action, upheaval, testing, and strain. Indeed, no ecology of late capitalism, given the variety of forces to which it is connected by a thousand pulleys, vibrations, impingements, dependencies, shocks and thin threads, can specify with supreme confidence the solidity or potential flexibility of the structures it seeks to change. The strength of structural theory, at its best, was in identifying institutional intersections that hold a system together; its conceit, at its worst, was the claim to know in advance how resistant those intersections are to potential change. Without adopting the opposite conceit, it seems important to pursue possible sites of strategic action that might open up room for productive change. Today it seems important to attend to the relation between the need for structural change and identification of multiple sites of potential action. You do not know precisely what you are doing when you participate in such a venture. You combine an experimental temper with the appreciation that living and acting into the future inevitably carries a shifting quotient of uncertainty with it. The following tentative judgments and sites of action may be pertinent.

#### Critical academia that doesn’t engage politics makes efficacy impossible – they re-inscribe the existing structure in a constant critique

Bryant 12 (levi, prof of philosophy at Collins college, Critique of the Academic Left, http://larvalsubjects.wordpress.com/2012/11/11/underpants-gnomes-a-critique-of-the-academic-left/)

The problem as I see it is that this is the worst sort of abstraction (in the Marxist sense) and wishful thinking. Within a Marxo-Hegelian context, a thought is abstract when it ignores all of the mediations in which a thing is embedded. For example, I understand a robust tree abstractly when I attribute its robustness, say, to its genetics alone, ignoring the complex relations to its soil, the air, sunshine, rainfall, etc., that also allowed it to grow robustly in this way. This is the sort of critique we’re always leveling against the neoliberals. They are abstract thinkers. In their doxa that individuals are entirely responsible for themselves and that they completely make themselves by pulling themselves up by their bootstraps, neoliberals ignore all the mediations belonging to the social and material context in which human beings develop that play a role in determining the vectors of their life. They ignore, for example, that George W. Bush grew up in a family that was highly connected to the world of business and government and that this gave him opportunities that someone living in a remote region of Alaska in a very different material infrastructure and set of family relations does not have. To think concretely is to engage in a cartography of these mediations, a mapping of these networks, from circumstance to circumstance (what I call an “onto-cartography”). It is to map assemblages, networks, or ecologies in the constitution of entities. Unfortunately, the academic left falls prey to its own form of abstraction. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignoring how networks, assemblages, structures, or regimes of attraction would have to be remade to create a workable alternative. Here I’m reminded by the “underpants gnomes” depicted in South Park: The underpants gnomes have a plan for achieving profit that goes like this: Phase 1: Collect Underpants Phase 2: ? Phase 3: Profit! They even have a catchy song to go with their work: Well this is sadly how it often is with the academic left. Our plan seems to be as follows:Phase 1: Ultra-Radical CritiquePhase 2: ?Phase 3: Revolution and complete social transformation!Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. Yet this is where everything begins to fall apart. Even though these critiques are often right, we express them in ways that only an academic with a PhD in critical theory and post-structural theory can understand. How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing? But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology than to undermine reigning ideology. These are the people that keep Rush Limbaugh in business. Well done! But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, and when we do, our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals? We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc. What are your proposals? How will you meet these problems? How will you navigate the existing mediations or semiotic and material features of infrastructure? Marx and Lenin had proposals. Do you? Have you even explored the cartography of the problem? Today we are so intellectually bankrupt on these points that we even have theorists speaking of events and acts and talking about a return to the old socialist party systems, ignoring the horror they generated, their failures, and not even proposing ways of avoiding the repetition of these horrors in a new system of organization. Who among our critical theorists is thinking seriously about how to build a distribution and production system that is responsive to the needs of global consumption, avoiding the problems of planned economy, ie., who is doing this in a way that gets notice in our circles? Who is addressing the problems of micro-fascism that arise with party systems (there’s a reason that it was the Negri & Hardt contingent, not the Badiou contingent that has been the heart of the occupy movement). At least the ecologists are thinking about these things in these terms because, well, they think ecologically. Sadly we need something more, a melding of the ecologists, the Marxists, and the anarchists. We’re not getting it yet though, as far as I can tell. Indeed, folks seem attracted to yet another critical paradigm, Laruelle. I would love, just for a moment, to hear a radical environmentalist talk about his ideal high school that would be academically sound. How would he provide for the energy needs of that school? How would he meet building codes in an environmentally sound way? How would she provide food for the students? What would be her plan for waste disposal? And most importantly, how would she navigate the school board, the state legislature, the federal government, and all the families of these students? What is your plan? What is your alternative? I think there are alternatives. I saw one that approached an alternative in Rotterdam. If you want to make a truly revolutionary contribution, this is where you should start. Why should anyone even bother listening to you if you aren’t proposing real plans? But we haven’t even gotten to that point. Instead we’re like underpants gnomes, saying “revolution is the answer!” without addressing any of the infrastructural questions of just how revolution is to be produced, what alternatives it would offer, and how we would concretely go about building those alternatives. Masturbation. “Underpants gnome” deserves to be a category in critical theory; a sort of synonym for self-congratulatory masturbation. We need less critique not because critique isn’t important or necessary– it is –but because we know the critiques, we know the problems. We’re intoxicated with critique because it’s easy and safe. We best every opponent with critique. We occupy a position of moral superiority with critique. But do we really do anything with critique? What we need today, more than ever, is composition or carpentry. Everyone knows something is wrong. Everyone knows this system is destructive and stacked against them. Even the Tea Party knows something is wrong with the economic system, despite having the wrong economic theory. None of us, however, are proposing alternatives. Instead we prefer to shout and denounce. Good luck with that.

#### Simulated legal debates are key to social transformation—creates a rallying point

Karl Klare, George J. & Kathleen Waters Matthews Distinguished University Professor, Northeastern University School of Law, “Teaching Local 1330—Reflections on Critical Legal Pedagogy,” (‘11). School of Law Faculty Publications. Paper 167. http://hdl.handle.net/2047/d20002528

This dialogue continues for awhile. **One ineffective theory after another is put on the table**. **Only once or twice in the decades I have taught this exercise have the students gotten close to a viable legal theory**. But this is not wasted time—lear**n**ing **occurs in** this phase of **the exercise**. **The point conveyed is** that **while law and morals/politics are inextricably intertwined**, **they are not the same**. For one thing, **lawyers have a distinct way of talking about and analyzing problems** that is characteristic of the legal culture of a given time and place. So-called “**legal reasoning**” **is actually a repertoire of conventional**, **culturally approved rhetorical moves and counter-moves** **deployed by lawyers** to **create an appearance of** the **legal necessity** of the results for which they contend. In addition, **good lawyers** actually **possess useful**, specialized **knowledge** not **generally** absorbed by **political theorists or movement** activists**. Legal training sensitizes us** **to the many complexities that arise whenever general norms and principles are implemented in the form of rules** of decision **or case applications**. **Lawyers know**, for example, that large stakes may turn on precisely how a right is defined, **who has standing** to vindicate it, **what remedies it provides, how the right is enforced** and in what venue(s), and so on. **We are not doing our jobs** properly **if we argue,** simply, “**what the defendant did was unjust and the plaintiff deserves relief**.” No one needs a lawyer to make the “what the defendant did was unjust” argument. As Lynd‟s account shows, the workers of Youngstown did make that argument in their own, eloquent words and through their collective resistance to the shut-downs. **If “what the defendant did was unjust” is all we have to offer, lawyers bring no added value to the table. Progressive students** sometimes **tell themselves** that **law is** basically **gobbledygook**, but that you can assist movements for social change if you learn how to spout the right gobbledygook. In this view of legal practice, “creativity” consists in identifying an appropriate technicality that helps your client. But in the Youngstown situation, we are way past that naïve view. There is no “technicality” that can win the case. In this setting, **a social justice lawyer must use the bits and pieces lying around to generate new legal knowledge and new legal theories**. And **these new theories must say something** **more than** “**my client deserves to win**” (although it is fine to commence one‟s research on the basis of that moral intuition). The class is beginning to get frustrated, and around now someone says “well, what do you expect? This is capitalism. There‟s no way the workers were going to win.” The “this-is-capitalism” (“TIC”) statement sometimes comes from the right, sometimes from the left, and usually from both ends of the spectrum but in different ways. The TIC statement precipitates another teachable moment. I begin by saying that we need to tease out exactly what the student means by TIC, as several interpretations are possible. For example, TIC might be a prediction of what contemporary courts are most likely to do. That is, TIC might be equivalent to saying that “it doesn‟t matter what theory you come up with; 999 US judges out of 1,000 would rule for U. S. Steel.”17 I allow that this is probably true, but not very revealing. The workers knew what the odds were before they launched the case. Even if doomed to fail, **a legal case may still make a contribution to social justice** if **the litigation creates a** focal point **of energy around which a community can mobilize, articulate moral and political claims, educate the wider public, and conduct political consciousness-raising**. And if there is political value in pursuing a case, we might as well make good legal arguments. On an alternative reading, the TIC observation is more ambitious than a mere prediction. It might be a claim that a capitalist society requires a legal structure of a certain kind, and that therefore professionally acceptable legal reasoning within capitalist legal regimes cannot produce a theory that interrogates the status quo beyond a certain point. Put another way, some outcomes are so foreign to the bedrock assumptions of private ownership that they cannot be reached by respectable legal reasoning. A good example of an outcome that is incompatible with capitalism, so the argument goes, is a court order interfering with U.S. Steel‟s decision to leave Youngstown. **This reading of the TIC comment embodies** **the idea** that **legal discourse** is **encased within a deeper**, extra-legal **structure given by requirements of** the social order (**capitalism**), **so that within professionally responsible legal argument** **the best lawyers in the world could not state a winning theory** in Local 1330. Ironically, **the left and the right in the class often share this belief.** I take both conservative and progressive students on about this. I insist that **the** **claim** that **our law is constrained by a** **rigid meta-logic of capitalism**—which curiously parallels the notion that legal outcomes are tightly constrained by legal reasoning—is just plain wrong. **Capitalist societies recognize** all **sorts of limitations** **on the rights of property owners**. Professor Singer‟s classic article catalogues a multitude of them.18 **The claim is not only false**, **it is a** dangerous **falsehood**. **To believe TIC in this sense is to limit in advance our aspirations for what social justice lawyering can accomplish**.

#### Abandoning policy discussion for epistemological questioning freezes action—it’s intellectual elitism

Jarvis 2k [Darryl Jarvis (Director of the Research Institute for International Risk and Lecturer in International Relations, The University of Sydney) 2000 “International relations and the challenge of postmodernism” p. 128-9]

More is the pity that such irrational and obviously abstruse debate should so occupy us at a time of great global turmoil.  That it does and continues to do so reflects our lack of judicious criteria for evaluating theory and, more importantly, the lack of attachment theorist have to the real world.  Certainly it is right and proper that we ponder what we ponder the depth of our theoretical imagination, engage in epistemological and ontological debate, and analyze the sociology of our knowledge.  But to suppose that this is the only talk on international theory, let alone the most important one, smacks of intellectual elitism and displays a certain contempt for those who search for guidance in their daily struggle as actors in international politics.  What does Ashley’s project, his deconstructive efforts, or valiant fight against positivism say to the truly marginalized, oppressed, and destitute?  How does it help solve the plight of the poor, the displaced refugees, the casualties of war, or the emrigres of death squads?  Does it in any way speak to those actions and thoughts comprise the policy and practice of international relations?  On all these questions one must answer no.  That is not to say, of course, that all theory should be judged by its technical rationality and problem solving capacity as Ashley forcefully argues.  But to suppose that problem solving technical theory is not necessary – or is in some way bad – is a contemptuous position that abrogates any hope of solving some of the nightmarish realities that millions confront daily.  As Holsti argues, we need ask of these theorists and their theories the ultimate question, “So What?”  To what purpose do they construct, problematize, destabilize, undermine, ridicule, and belittle modernist and rationalist approaches?  Does this get us any further, make the world any better, or enhance the human condition?  In what sense can this “debate towards bottomless pit of epistemology and metaphysics” be judged pertinent, relevant, helpful, or cogent to anyone other than those foolish enough to be scholastically excited by abstract and recondite debate?

#### Policy simulation is key to political activism—we learn the levers of power

Coverstone 5 [MBA (Alan, Acting on Activism)

An important concern emerges when Mitchell describes reflexive fiat as a contest strategy capable of “eschewing the power to directly control external actors” (1998b, p. 20). Describing debates about what our government should do as attempts to control outside actors is debilitating and disempowering. Control of the US government is exactly what an active, participatory citizenry is supposed to be all about. After all, if democracy means anything, it means that citizens not only have the right, they also bear the obligation to discuss and debate what the government should be doing. Absent that discussion and debate, much of the motivation for personal political activism is also lost. Those who have co-opted Mitchell’s argument for individual advocacy often quickly respond that nothing we do in a debate round can actually change government policy, and unfortunately, an entire generation of debaters has now swallowed this assertion as an article of faith. The best most will muster is, “Of course not, but you don’t either!” The assertion that nothing we do in debate has any impact on government policy is one that carries the potential to undermine Mitchell’s entire project. If there is nothing we can do in a debate round to change government policy, then we are left with precious little in the way of pro-social options for addressing problems we face. At best, we can pursue some Pilot-like hand washing that can purify us as individuals through quixotic activism but offer little to society as a whole. It is very important to note that Mitchell (1998b) tries carefully to limit and bound his notion of reflexive fiat by maintaining that because it “views fiat as a concrete course of action, it is bounded by the limits of pragmatism” (p. 20). Pursued properly, the debates that Mitchell would like to see are those in which the relative efficacy of concrete political strategies for pro-social change is debated. In a few noteworthy examples, this approach has been employed successfully, and I must say that I have thoroughly enjoyed judging and coaching those debates. The students in my program have learned to stretch their understanding of their role in the political process because of the experience. Therefore, those who say I am opposed to Mitchell’s goals here should take care at such a blanket assertion. However, contest debate teaches students to combine personal experience with the language of political power. Powerful personal narratives unconnected to political power are regularly co-opted by those who do learn the language of power. One need look no further than the annual state of the Union Address where personal story after personal story is used to support the political agenda of those in power. The so-called role-playing that public policy contest debates encourage promotes active learning of the vocabulary and levers of power in America. Imagining the ability to use our own arguments to influence government action is one of the great virtues of academic debate. Gerald Graff (2003) analyzed the decline of argumentation in academic discourse and found a source of student antipathy to public argument in an interesting place. I’m up against…their aversion to the role of public spokesperson that formal writing presupposes. It’s as if such students can’t imagine any rewards for being a public actor or even imagining themselves in such a role. This lack of interest in the public sphere may in turn reflect a loss of confidence in the possibility that the arguments we make in public will have an effect on the world. Today’s students’ lack of faith in the power of persuasion reflects the waning of the ideal of civic participation that led educators for centuries to place rhetorical and argumentative training at the center of the school and college curriculum. (Graff, 2003, p. 57) The power to imagine public advocacy that actually makes a difference is one of the great virtues of the traditional notion of fiat that critics deride as mere simulation. Simulation of success in the public realm is far more empowering to students than completely abandoning all notions of personal power in the face of governmental hegemony by teaching students that “nothing they can do in a contest debate can ever make any difference in public policy.” Contest debating is well suited to rewarding public activism if it stops accepting as an article of faith that personal agency is somehow undermined by the so-called role playing in debate. Debate is role-playing whether we imagine government action or imagine individual action. Imagining myself starting a socialist revolution in America is no less of a fantasy than imagining myself making a difference on Capitol Hill. Furthermore, both fantasies influenced my personal and political development virtually ensuring a life of active, pro-social, political participation. Neither fantasy reduced the likelihood that I would spend my life trying to make the difference I imagined. One fantasy actually does make a greater difference: the one that speaks the language of political power. The other fantasy disables action by making one a laughingstock to those who wield the language of power. Fantasy motivates and role-playing trains through visualization. Until we can imagine it, we cannot really do it. Role-playing without question teaches students to be comfortable with the language of power, and that language paves the way for genuine and effective political activism. Debates over the relative efficacy of political strategies for pro-social change must confront governmental power at some point. There is a fallacy in arguing that movements represent a better political strategy than voting and person-to-person advocacy. Sure, a full-scale movement would be better than the limited voice I have as a participating citizen going from door to door in a campaign, but so would full-scale government action. Unfortunately, the gap between my individual decision to pursue movement politics and the emergence of a full-scale movement is at least as great as the gap between my vote and democratic change. They both represent utopian fiat. Invocation of Mitchell to support utopian movement fiat is simply not supported by his work, and too often, such invocation discourages the concrete actions he argues for in favor of the personal rejectionism that under girds the political cynicism that is a fundamental cause of voter and participatory abstention in America today.

#### Engaging the state is productive—that means discussions of fiat are valuable. Statism is inevitable—innovative engagement can redirect power for emancipation.

Martin and Pierce ’13 Deborah G. Martin, Joseph Pierce, “Reconceptualizing Resistance: Residuals of the State and Democratic Radical Pluralism,” Antipode, Vol. 45, Issue 1, pp. 61-79, January 2013, DOI: 10.1111/j.1467-8330.2012.00980.x

The state offers a complex set of power structures against and with which resistance struggles (Holloway 2005; Scott 1988; Tormey 2004). Indeed, Holloway (2005) sees the state as so entrenched in power relations such that any resistance in or through the state is irrevocably bound up in its power logic. We acknowledge state power as always present, but not necessarily as monolithic.2 Despite—or perhaps because of— the power relations inherent in state frameworks, it is in part through laws and state regulations that activists can achieve reworked economic relations such as worker ownership, community banks, or cooperative housing (DeFilippis 2004). Hackworth explicitly acknowledges the possibility of a “neo-Keynesian” resistance which seeks to maintain relatively left-leaning state functions. Ultimately, though, he dismisses the resistive potential of such “neo-Keynesian” efforts, arguing that they have yielded “highly limited” successes (2007:191). We argue, however, that focusing on a state's ordering functions [the “police” component of states; as in Rancière (2004)] may provide a lens for examining how resistance through the state might destabilize or subvert neoliberal hegemony. We articulate the notion of residuals, or mechanisms of the state that can, or have historically, been wielded to mitigate inequalities of capitalism. In order to explore this arena as potentially productive for resistance, we first consider radical democracy as an already-articulated conceptualization of neoliberal resistance (Laclau and Mouffe 1985; Purcell 2008). Radical democracy does not seek to enroll the state in resistance to capital, per se, but recognizes the simultaneous co-presence of a hegemonic (but always changing) state, and anti-hegemonic resistances. Radical Democracy: Responding to Hegemony? The concept of radical democracy provides a framework for articulating where residual state apparatuses stand amidst the myriad layers of state functions, power, and hegemony (cf Laclau and Mouffe 1985; Rancière 2004). We imagine a politics in which the state –whether capitalist or not— is always hegemonic, and thus always produces an outside or excluded that is resistant to the hegemonic order. Radical democracy as initially described by Laclau and Mouffe (1985) offered a theory of resistance—although they did not use that term—to capitalist hegemonies.3 Their goal was to identify a leftist, anti-hegemonic political project that did not rely on unitary categories such as class, in response to the identity politics of the 1970s to 1990s and post-structural theorizing of the absence of any common (structural or cultural) basis for political transformation. The theory of radical democracy posits that any order is an hegemonic order; the post-Marxist socialist project of Laclau and Mouffe seeks to destabilize the hegemonies of capitalism and work towards more democratic articulations that marginalize capital, even as forms of inequality may persist (Laclau and Mouffe 1985). Nonetheless, they can seek more articulations, more opportunities for social protest and struggle over multiple inequalities. Each struggle will produce—or seek to produce—new orders, or hegemonies, but these will be unseated by other struggles; this process describes a democracy not defined solely by a capitalist hegemony. As scholars have increasingly taken neoliberalism as the distinct form of contemporary capitalism in response to which resistance is engaged, they have explored the ways that its intense market logic constricts possibilities for traditional political activism to engage the state: the state is responsive primarily to the logic of facilitating the work of private capital (Brenner and Theodore 2002; Harvey 2005; Mitchell 2003; Peck and Tickell 2002; Purcell 2008). At the same time, however, neoliberalism opens possibilities for resistance because of its internal contradictions (like all hegemonic orders); it simultaneously engages the state to facilitate capital expansion, yet rhetorically rejects the state as an active player in market logics (Leitner, Peck and Sheppard 2007; Peck and Tickell 2002; Purcell 2008). In doing so, the door is opened for alternative projects and resistances. Purcell (2008) takes up the ideals of radical democracy to focus on how it might provide specific means for resistance to neoliberalism. He wants to take the insights of Laclau and Mouffe and apply them to a particular, empirically informed framework for engaged activism that actually interrupts, if not challenges (and mostly not, in his examples), neoliberalism. As a result, Purcell engages specifically with the idea of “chains of equivalence”, which he defines as “entities [which] must simultaneously be both different and the same” (2008:74). Political coalitions and actors with shared or complimentary challenges to neoliberalism—but distinct in character, goals, and identities—form networks of equivalence [Purcell (2008), drawing from Hardt and Negri (2004) as well as Laclau and Mouffe (1985)]. Simply put, networks of equivalence conceptually allow for multiple groups with different specific interests and identities to band together to challenge the hegemony of neoliberal capitalism. The crucial point for Purcell, however, and the key radical pluralist component is that those groups can work together without having to resolve their internal differences; they need only share a common questioning of the neoliberal prioritizing of private capital. They share a struggle, then, for a different hegemony (Laclau and Mouffe 1985; Purcell 2008). In the battle against global finance, for example, activists with different specific interests (agriculture or trade policy or environmental protections) confront the state in the form of police in the streets of Seattle or Cancun (Wainwright 2007); their objections are to the state policies and agreements which support and create frameworks for world trade. In Purcell's (2008) networks of equivalence in Seattle, a similar, yet more spatially circumscribed network of neighborhood community activists, environmental activists, and a Native American tribe work together to challenge the terms of the environmental clean-up of toxins in and around the Duwamish River. Their target is the corporate interests being held responsible for actually funding the clean-up. The agent helping to hold the corporate interests accountable is the Federal Environmental Protection Agency (EPA). Seattle area environmental activists have been able to form a “chain of equivalence” with the EPA in the Duwamish clean-up in part by inserting themselves into an EPA framework that seeks stakeholder input through a participatory planning structure. The shared interests of the EPA and environmental activists are not obvious or easy to negotiate; the EPA, as a bureaucracy with many actors situated within the US federal system, is positioned as a complex institutional agent. But its particular mandate with regard to environmental protection offers a difficult relation to capital, one sometimes allied with non-state actors seeking limits to capital. Purcell's (2008) account of this case is insightful and engaging. We are highly sympathetic to his project of conceptualizing resistance and, by connection, a better, more complete democracy. But we differ over some of the details—essential details—of how best to enact successful resistances. In his case study of the Duwamish River clean up in Seattle, Purcell (2008) cites government policies as the factor enabling community resistance and involvement. His account is historically detailed—and necessarily so, for the complexities of the state have everything to do with the sedimented and sometimes inherently contradictory nature of its policies and procedures. In brief, he points to the EPA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also known as “Superfund”), and associated environmental laws as a sort of “environmental Keynesianism” that the federal government enacted in the decade of the 1970s (through 1980) (Purcell 2008:137). For Purcell, the neoliberalisation of these laws is evident in the increasing local devolution of governance authority over particular Superfund sites, including his case of the Duwamish River, resulting in “a proliferation of ad hoc and special purpose entities [that] increasingly carries out the everyday decision-making in Superfund cleanups” (2008:137). At the same time, however, Purcell (2008:138) acknowledges “that such ‘flexibilization’ … tends to create political opportunities that social movements can exploit”. We want to engage the idea that such flexible—or Keynesian—tools of the state are levers that can force the state to act in ways that might be counter to capital and in the service of greater democracy. In particular, we hope for a more complex, and, we expect, more practically productive conceptualization of resistance in relation to the state. While Purcell (2008:38, 183, note 2,2) acknowledges resistive possibilities from engagement with the state, he also notes that “the state is fully imbricated in the project of neoliberalization” (a point also made elsewhere; cf Harvey 2005; Holloway 2005; Mitchell 2003; Smith 1996; Wainwright 2007). We do not disagree with the basic contention that the state regulates and administers a hegemonic political economic order of and for capital. But the state is complex; following the persuasive arguments of Laclau and Mouffe (1985) and the example of the EPA in Purcell (2008), the state ought to be conceptualized like any actor: as multifaceted, with many possible subjectivities in relation to any particular conflict. This complexity offers the possibility that the state can be a tool for resistance, one we explore further in the rest of this paper.

#### The master’s tools can be used to dismantle the master’s house

James 09

Robin M. James, Assistant Professor in the Philosophy Department at the University of North Carolina at Charlotte, Spring 2009, Hypatia, available via Wiley online library

In these two instances of successful reappropriation of the master's tools—autonomy/universality and the guitar—the particular, real-world advantages offered by this technique might even require its adoption in instances where nothing else can “do” what it “does.” Indeed, to require that we categorically abandon the master's tools seems itself to be an overly abstract “ideal” that overlooks the often contradictory, historically overdetermined real-world contexts in which all ideas are made meaningful and in which actions unfold. In this world, the stage is already set in certain ways, and sometimes the best or only way to maneuver through its various obstacles requires the repurposing of what we find in/on this stage. If, as Coates's discussion demonstrates, power functions not only at the level of ideology, but also at the level of desire, then feminists cannot avoid engaging dominant structures of feeling and affective conventions (such as those at work in tonal harmony and/or rock music), because these cannot be persuaded or altered by “facts” or arguments (that is, ideological critique or demystification). Reading Butler and Peaches from the perspective of non-ideal theory demonstrates that a reappropriation of the “master's tools” is successful not only when it is more effective or affective than anything else, but also when its use of these tools problematizes or voids the master/slave or insider/outsider hierarchy itself. Under these conditions, the master's tools (for example, “autonomy,”“universality,” and playing the guitar) can indeed bring down the master's house.

#### The law is malleable—debating it is the only way to affect change

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the environments of other systems by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more pliant and responsive to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism. A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project. Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes: I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59 A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge. The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject. [Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62 Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity). What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests. Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany. This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7 There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order. Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities. Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition: In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80 Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82 It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them. 4. Conclusion Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law. This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. But the denial of their legitimacy or possibility moves us in the direction of authoritarian conceptions of law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to fully do so.

#### Intervening in the state is not weak reformism, but radical experimentation. Predetermining the government as an impenetrable structure repeats the worst of structuralist irresponsibility by needlessly bracketing leftist politics into irrelevance.

Connolly ’12 William E. Connolly, Krieger-Eisenhower Professor of Political Science at Johns Hopkins University, “Steps toward an Ecology of Late Capitalism,” Theory & Event, Vol. 15, Issue 1, 2012, Muse

A philosophy attending to the acceleration, expansion, irrationalities, interdependencies and fragilities of late capitalism suggests that we do not know with confidence, in advance of experimental action, just how far or fast changes in the systemic character of neoliberal capitalism can be made. The structures often seem solid and intractable, and indeed such a semblance may turn out to be true. Some may seem solid, infinitely absorptive, and intractable when they are in fact punctuated by hidden vulnerabilities, soft spots, uncertainties and potential lines of flight that become apparent as they are subjected to experimental action, upheaval, testing, and strain. Indeed, no ecology of late capitalism, given the variety of forces to which it is connected by a thousand pulleys, vibrations, impingements, dependencies, shocks and thin threads, can specify with supreme confidence the solidity or potential flexibility of the structures it seeks to change. The strength of structural theory, at its best, was in identifying institutional intersections that hold a system together; its conceit, at its worst, was the claim to know in advance how resistant those intersections are to potential change. Without adopting the opposite conceit, it seems important to pursue possible sites of strategic action that might open up room for productive change. Today it seems important to attend to the relation between the need for structural change and identification of multiple sites of potential action. You do not know precisely what you are doing when you participate in such a venture. You combine an experimental temper with the appreciation that living and acting into the future inevitably carries a shifting quotient of uncertainty with it. The following tentative judgments and sites of action may be pertinent.

### K

#### Let us weigh the fiated implications of the aff against the alternative—a) key to aff engagement, since otherwise they moot the entirety of the 1AC and I’m forced to re-establish offense in the 1AR which exacerbates side bias, b) stasis point—ensures the plan text remains the stable locus of argumentation—key to reciprocity since otherwise they can just critique 1 tiny thing I did in the 1AC, and key to clash since the discussion is centered and predictable which solves irresolvable clash of civilizations debates.

#### Second, to understand requires internal critique of assumptions, but for us to even understand the critique requires that it start within the framework of our original for-meanings. Thus critique and development of the aff is important, but it must start within the affs general methodology, otherwise no engagement or development is possible.

Gadamer ’60 (Hans-Georg Gadamer. Truth and Method. 1960. [modified for gendered language) bracketed for gender

What Heidegger is working out here is not primarily a prescription for the practice of understanding, but a description of the way interpretive understanding is achieved. The point of Heidegger's hermeneutical reflection is not so much to prove that there is a circle, as to show that this circle possesses an ontologically positive significance. The description as such will be obvious to every interpreter who knows what he is about.3 All correct interpretation must be on guard against arbitrary fancies and the limitations imposed by imperceptible habits of thought, and it must direct its gaze "on the things themselves" (which, in the case of the literary critic, are meaningful texts, which themselves are again concerned with objects). For the interpreter to let himself be guided by the things themselves is obviously not a matter of a single, "conscientious" decision, but is "the first, last, and constant task." For it is necessary to keep one's gaze fixed on the thing throughout all the constant distractions that originate in the interpreter himself. A person who is trying to understand a text is always projecting. [They] project a meaning for the text as a whole as soon as some initial meaning emerges in the text. Again, the initial meaning emerges only because [they are] reading the text with particular expectations in regard to a certain meaning. Working out this fore-projection, which is constantly revised in terms of what emerges as he penetrates into the meaning, is understanding what is there. This description is, of course, a rough abbreviation of the whole. The process that Heidegger describes is that every revision of the fore projection is capable of projecting before itself a new projection of meaning; rival projects can emerge side by side until it becomes clearer what the unity of meaning is; interpretation begins with fore-conceptions that are replaced by more suitable ones. This constant process of new projection constitutes the movement of understanding and interpretation. A person who is trying to understand is exposed to distraction from fore meanings that are not borne out by the things themselves. Working out appropriate projections, anticipatory in nature, to be confirmed "by the things" themselves, is the constant task of understanding. The only "objectivity" here is the confirmation of a fore-meaning in its being worked out. Indeed, what characterizes the arbitrariness of inappropriate fore meanings if not that they come to nothing in being worked out? But understanding realizes **its** full potential only when the fore-meanings that it begins with are not arbitrary. Thus it is quite right for the interpreter not to approach the text directly, relying solely on the fore-meaning already available to him, but rather explicitly to examine the legitimacy—i.e., the origin and validity—of the fore-meanings dwelling within him. This basic requirement must be seen as the radicalization of a procedure that we in fact exercise whenever we understand anything. Every text presents the task of not simply leaving our own linguistic usage unexamined—or in the case of a foreign language the usage that we are familiar with from writers or from daily intercourse. Rather, we regard our task as deriving our understanding of the text from the linguistic usage of the time or of the author. The question is, of course, how this general requirement can be fulfilled. Especially in the field of semantics we are confronted with the problem that our own use of language is unconscious. How do we discover that there is a difference between our own customary usage and that of the text? I think we must say that generally we do so in the experience of being pulled up short by the text. Either it does not yield any meaning at all or its meaning is not compatible with what we had expected. This is what brings us up short and alerts us to a possible difference in usage. Someone who speaks the same language as I do uses the words in the sense familiar to me—this is a general presupposition that can be questioned only in particular cases. The same thing is true in the case of a foreign language: we all think we have a standard knowledge of it and assume this standard usage when we are reading a text. What is true of fore-meanings that stem from usage, however, is equally true of the fore-meanings concerning content with which we read texts, and which make up our fore-understanding. Here too we may ask how we can break the spell of our own fore-meanings. There can, of course, be a general expectation that what the text says will fit perfectly with my own meanings and expectations. But what another person tells me, whether in conversation, letter, book, or whatever, is generally supposed to be his own and not my opinion; and this is what I am to take note of without necessarily having to share it. Yet this presupposition is not something that makes understanding easier, but harder, since the fore-meanings that determine my own understanding can go entirely unnoticed. If they give rise to misunderstandings, how can our misunderstandings of a text be perceived at all if there is nothing to contradict them? How can a text be protected against misunderstanding from the start? If we examine the situation more closely, however, we find that meanings cannot be understood in an arbitrary way. Just as we cannot continually misunderstand the use of a word without its affecting the meaning of the whole, so we cannot stick ~~blindly~~ to our own fore-meaning about the thing if we want to understand the meaning of another. **Of course** this does not mean that when we listen to someone or read a book we must forget all our fore-meanings concerning the content and all our own ideas. All that is asked is that we remain open to the meaning of the other person or text. But this openness always includes our situating the other meaning in relation to the whole of our own meanings or ourselves in relation to it. Now, the fact is that meanings represent a fluid multiplicity of possibilities (in comparison to the agreement presented by a language and a vocabulary), but within this multiplicity of what can be thought—i.e., of what a reader can find meaningful and hence expect to find—not everything is possible; and if a person fails to hear what the other person is really saying, he will not be able to fit what he has misunderstood into the range of his own various expectations of meaning. Thus there is a criterion here also. The hermeneutical task becomes of itself a questioning of things and is always in part so defined. This places hermeneutical work on a firm basis. A person trying To understand something will not resign himself from the start to relying on his own accidental fore-meanings, ignoring as consistently and stubbornly as possible the actual meaning of the text until the latter becomes so persistently audible that it breaks through what the interpreter imagines it to be. Rather, **a person trying to understand** a text is prepared for it to tell him something. That is why a hermeneutically trained consciousness **must be,** from the start, **sensitive to** the text's **alterity**. **But this kind of sensitivity involves neither "neutrality" with respect to content nor the extinction of one's self, but the foregrounding and appropriation of one's own fore-meanings and prejudices.** The important thing is to be aware of one's own bias, so that the text can present itself in all its otherness and thus assert its own truth against one's own fore-meanings.

#### Critical academia that doesn’t engage politics makes efficacy impossible – they re-inscribe the existing structure in a constant critique

Bryant 12 (levi, prof of philosophy at Collins college, Critique of the Academic Left, http://larvalsubjects.wordpress.com/2012/11/11/underpants-gnomes-a-critique-of-the-academic-left/)

The problem as I see it is that this is the worst sort of abstraction (in the Marxist sense) and wishful thinking. Within a Marxo-Hegelian context, a thought is abstract when it ignores all of the mediations in which a thing is embedded. For example, I understand a robust tree abstractly when I attribute its robustness, say, to its genetics alone, ignoring the complex relations to its soil, the air, sunshine, rainfall, etc., that also allowed it to grow robustly in this way. This is the sort of critique we’re always leveling against the neoliberals. They are abstract thinkers. In their doxa that individuals are entirely responsible for themselves and that they completely make themselves by pulling themselves up by their bootstraps, neoliberals ignore all the mediations belonging to the social and material context in which human beings develop that play a role in determining the vectors of their life. They ignore, for example, that George W. Bush grew up in a family that was highly connected to the world of business and government and that this gave him opportunities that someone living in a remote region of Alaska in a very different material infrastructure and set of family relations does not have. To think concretely is to engage in a cartography of these mediations, a mapping of these networks, from circumstance to circumstance (what I call an “onto-cartography”). It is to map assemblages, networks, or ecologies in the constitution of entities. Unfortunately, the academic left falls prey to its own form of abstraction. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignoring how networks, assemblages, structures, or regimes of attraction would have to be remade to create a workable alternative. Here I’m reminded by the “underpants gnomes” depicted in South Park: The underpants gnomes have a plan for achieving profit that goes like this: Phase 1: Collect Underpants Phase 2: ? Phase 3: Profit! They even have a catchy song to go with their work: Well this is sadly how it often is with the academic left. Our plan seems to be as follows:Phase 1: Ultra-Radical CritiquePhase 2: ?Phase 3: Revolution and complete social transformation!Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. Yet this is where everything begins to fall apart. Even though these critiques are often right, we express them in ways that only an academic with a PhD in critical theory and post-structural theory can understand. How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing? But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology than to undermine reigning ideology. These are the people that keep Rush Limbaugh in business. Well done! But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, and when we do, our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals? We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc. What are your proposals? How will you meet these problems? How will you navigate the existing mediations or semiotic and material features of infrastructure? Marx and Lenin had proposals. Do you? Have you even explored the cartography of the problem? Today we are so intellectually bankrupt on these points that we even have theorists speaking of events and acts and talking about a return to the old socialist party systems, ignoring the horror they generated, their failures, and not even proposing ways of avoiding the repetition of these horrors in a new system of organization. Who among our critical theorists is thinking seriously about how to build a distribution and production system that is responsive to the needs of global consumption, avoiding the problems of planned economy, ie., who is doing this in a way that gets notice in our circles? Who is addressing the problems of micro-fascism that arise with party systems (there’s a reason that it was the Negri & Hardt contingent, not the Badiou contingent that has been the heart of the occupy movement). At least the ecologists are thinking about these things in these terms because, well, they think ecologically. Sadly we need something more, a melding of the ecologists, the Marxists, and the anarchists. We’re not getting it yet though, as far as I can tell. Indeed, folks seem attracted to yet another critical paradigm, Laruelle. I would love, just for a moment, to hear a radical environmentalist talk about his ideal high school that would be academically sound. How would he provide for the energy needs of that school? How would he meet building codes in an environmentally sound way? How would she provide food for the students? What would be her plan for waste disposal? And most importantly, how would she navigate the school board, the state legislature, the federal government, and all the families of these students? What is your plan? What is your alternative? I think there are alternatives. I saw one that approached an alternative in Rotterdam. If you want to make a truly revolutionary contribution, this is where you should start. Why should anyone even bother listening to you if you aren’t proposing real plans? But we haven’t even gotten to that point. Instead we’re like underpants gnomes, saying “revolution is the answer!” without addressing any of the infrastructural questions of just how revolution is to be produced, what alternatives it would offer, and how we would concretely go about building those alternatives. Masturbation. “Underpants gnome” deserves to be a category in critical theory; a sort of synonym for self-congratulatory masturbation. We need less critique not because critique isn’t important or necessary– it is –but because we know the critiques, we know the problems. We’re intoxicated with critique because it’s easy and safe. We best every opponent with critique. We occupy a position of moral superiority with critique. But do we really do anything with critique? What we need today, more than ever, is composition or carpentry. Everyone knows something is wrong. Everyone knows this system is destructive and stacked against them. Even the Tea Party knows something is wrong with the economic system, despite having the wrong economic theory. None of us, however, are proposing alternatives. Instead we prefer to shout and denounce. Good luck with that.

#### Simulated legal debates are key to social transformation—creates a rallying point

Karl Klare, George J. & Kathleen Waters Matthews Distinguished University Professor, Northeastern University School of Law, “Teaching Local 1330—Reflections on Critical Legal Pedagogy,” (‘11). School of Law Faculty Publications. Paper 167. http://hdl.handle.net/2047/d20002528

This dialogue continues for awhile. **One ineffective theory after another is put on the table**. **Only once or twice in the decades I have taught this exercise have the students gotten close to a viable legal theory**. But this is not wasted time—lear**n**ing **occurs in** this phase of **the exercise**. **The point conveyed is** that **while law and morals/politics are inextricably intertwined**, **they are not the same**. For one thing, **lawyers have a distinct way of talking about and analyzing problems** that is characteristic of the legal culture of a given time and place. So-called “**legal reasoning**” **is actually a repertoire of conventional**, **culturally approved rhetorical moves and counter-moves** **deployed by lawyers** to **create an appearance of** the **legal necessity** of the results for which they contend. In addition, **good lawyers** actually **possess useful**, specialized **knowledge** not **generally** absorbed by **political theorists or movement** activists**. Legal training sensitizes us** **to the many complexities that arise whenever general norms and principles are implemented in the form of rules** of decision **or case applications**. **Lawyers know**, for example, that large stakes may turn on precisely how a right is defined, **who has standing** to vindicate it, **what remedies it provides, how the right is enforced** and in what venue(s), and so on. **We are not doing our jobs** properly **if we argue,** simply, “**what the defendant did was unjust and the plaintiff deserves relief**.” No one needs a lawyer to make the “what the defendant did was unjust” argument. As Lynd‟s account shows, the workers of Youngstown did make that argument in their own, eloquent words and through their collective resistance to the shut-downs. **If “what the defendant did was unjust” is all we have to offer, lawyers bring no added value to the table. Progressive students** sometimes **tell themselves** that **law is** basically **gobbledygook**, but that you can assist movements for social change if you learn how to spout the right gobbledygook. In this view of legal practice, “creativity” consists in identifying an appropriate technicality that helps your client. But in the Youngstown situation, we are way past that naïve view. There is no “technicality” that can win the case. In this setting, **a social justice lawyer must use the bits and pieces lying around to generate new legal knowledge and new legal theories**. And **these new theories must say something** **more than** “**my client deserves to win**” (although it is fine to commence one‟s research on the basis of that moral intuition). The class is beginning to get frustrated, and around now someone says “well, what do you expect? This is capitalism. There‟s no way the workers were going to win.” The “this-is-capitalism” (“TIC”) statement sometimes comes from the right, sometimes from the left, and usually from both ends of the spectrum but in different ways. The TIC statement precipitates another teachable moment. I begin by saying that we need to tease out exactly what the student means by TIC, as several interpretations are possible. For example, TIC might be a prediction of what contemporary courts are most likely to do. That is, TIC might be equivalent to saying that “it doesn‟t matter what theory you come up with; 999 US judges out of 1,000 would rule for U. S. Steel.”17 I allow that this is probably true, but not very revealing. The workers knew what the odds were before they launched the case. Even if doomed to fail, **a legal case may still make a contribution to social justice** if **the litigation creates a** focal point **of energy around which a community can mobilize, articulate moral and political claims, educate the wider public, and conduct political consciousness-raising**. And if there is political value in pursuing a case, we might as well make good legal arguments. On an alternative reading, the TIC observation is more ambitious than a mere prediction. It might be a claim that a capitalist society requires a legal structure of a certain kind, and that therefore professionally acceptable legal reasoning within capitalist legal regimes cannot produce a theory that interrogates the status quo beyond a certain point. Put another way, some outcomes are so foreign to the bedrock assumptions of private ownership that they cannot be reached by respectable legal reasoning. A good example of an outcome that is incompatible with capitalism, so the argument goes, is a court order interfering with U.S. Steel‟s decision to leave Youngstown. **This reading of the TIC comment embodies** **the idea** that **legal discourse** is **encased within a deeper**, extra-legal **structure given by requirements of** the social order (**capitalism**), **so that within professionally responsible legal argument** **the best lawyers in the world could not state a winning theory** in Local 1330. Ironically, **the left and the right in the class often share this belief.** I take both conservative and progressive students on about this. I insist that **the** **claim** that **our law is constrained by a** **rigid meta-logic of capitalism**—which curiously parallels the notion that legal outcomes are tightly constrained by legal reasoning—is just plain wrong. **Capitalist societies recognize** all **sorts of limitations** **on the rights of property owners**. Professor Singer‟s classic article catalogues a multitude of them.18 **The claim is not only false**, **it is a** dangerous **falsehood**. **To believe TIC in this sense is to limit in advance our aspirations for what social justice lawyering can accomplish**.

#### Engaging the state is productive—that means discussions of fiat are valuable. Statism is inevitable—innovative engagement can redirect power for emancipation.

Martin and Pierce ’13 Deborah G. Martin, Joseph Pierce, “Reconceptualizing Resistance: Residuals of the State and Democratic Radical Pluralism,” Antipode, Vol. 45, Issue 1, pp. 61-79, January 2013, DOI: 10.1111/j.1467-8330.2012.00980.x

The state offers a complex set of power structures against and with which resistance struggles (Holloway 2005; Scott 1988; Tormey 2004). Indeed, Holloway (2005) sees the state as so entrenched in power relations such that any resistance in or through the state is irrevocably bound up in its power logic. We acknowledge state power as always present, but not necessarily as monolithic.2 Despite—or perhaps because of— the power relations inherent in state frameworks, it is in part through laws and state regulations that activists can achieve reworked economic relations such as worker ownership, community banks, or cooperative housing (DeFilippis 2004). Hackworth explicitly acknowledges the possibility of a “neo-Keynesian” resistance which seeks to maintain relatively left-leaning state functions. Ultimately, though, he dismisses the resistive potential of such “neo-Keynesian” efforts, arguing that they have yielded “highly limited” successes (2007:191). We argue, however, that focusing on a state's ordering functions [the “police” component of states; as in Rancière (2004)] may provide a lens for examining how resistance through the state might destabilize or subvert neoliberal hegemony. We articulate the notion of residuals, or mechanisms of the state that can, or have historically, been wielded to mitigate inequalities of capitalism. In order to explore this arena as potentially productive for resistance, we first consider radical democracy as an already-articulated conceptualization of neoliberal resistance (Laclau and Mouffe 1985; Purcell 2008). Radical democracy does not seek to enroll the state in resistance to capital, per se, but recognizes the simultaneous co-presence of a hegemonic (but always changing) state, and anti-hegemonic resistances. Radical Democracy: Responding to Hegemony? The concept of radical democracy provides a framework for articulating where residual state apparatuses stand amidst the myriad layers of state functions, power, and hegemony (cf Laclau and Mouffe 1985; Rancière 2004). We imagine a politics in which the state –whether capitalist or not— is always hegemonic, and thus always produces an outside or excluded that is resistant to the hegemonic order. Radical democracy as initially described by Laclau and Mouffe (1985) offered a theory of resistance—although they did not use that term—to capitalist hegemonies.3 Their goal was to identify a leftist, anti-hegemonic political project that did not rely on unitary categories such as class, in response to the identity politics of the 1970s to 1990s and post-structural theorizing of the absence of any common (structural or cultural) basis for political transformation. The theory of radical democracy posits that any order is an hegemonic order; the post-Marxist socialist project of Laclau and Mouffe seeks to destabilize the hegemonies of capitalism and work towards more democratic articulations that marginalize capital, even as forms of inequality may persist (Laclau and Mouffe 1985). Nonetheless, they can seek more articulations, more opportunities for social protest and struggle over multiple inequalities. Each struggle will produce—or seek to produce—new orders, or hegemonies, but these will be unseated by other struggles; this process describes a democracy not defined solely by a capitalist hegemony. As scholars have increasingly taken neoliberalism as the distinct form of contemporary capitalism in response to which resistance is engaged, they have explored the ways that its intense market logic constricts possibilities for traditional political activism to engage the state: the state is responsive primarily to the logic of facilitating the work of private capital (Brenner and Theodore 2002; Harvey 2005; Mitchell 2003; Peck and Tickell 2002; Purcell 2008). At the same time, however, neoliberalism opens possibilities for resistance because of its internal contradictions (like all hegemonic orders); it simultaneously engages the state to facilitate capital expansion, yet rhetorically rejects the state as an active player in market logics (Leitner, Peck and Sheppard 2007; Peck and Tickell 2002; Purcell 2008). In doing so, the door is opened for alternative projects and resistances. Purcell (2008) takes up the ideals of radical democracy to focus on how it might provide specific means for resistance to neoliberalism. He wants to take the insights of Laclau and Mouffe and apply them to a particular, empirically informed framework for engaged activism that actually interrupts, if not challenges (and mostly not, in his examples), neoliberalism. As a result, Purcell engages specifically with the idea of “chains of equivalence”, which he defines as “entities [which] must simultaneously be both different and the same” (2008:74). Political coalitions and actors with shared or complimentary challenges to neoliberalism—but distinct in character, goals, and identities—form networks of equivalence [Purcell (2008), drawing from Hardt and Negri (2004) as well as Laclau and Mouffe (1985)]. Simply put, networks of equivalence conceptually allow for multiple groups with different specific interests and identities to band together to challenge the hegemony of neoliberal capitalism. The crucial point for Purcell, however, and the key radical pluralist component is that those groups can work together without having to resolve their internal differences; they need only share a common questioning of the neoliberal prioritizing of private capital. They share a struggle, then, for a different hegemony (Laclau and Mouffe 1985; Purcell 2008). In the battle against global finance, for example, activists with different specific interests (agriculture or trade policy or environmental protections) confront the state in the form of police in the streets of Seattle or Cancun (Wainwright 2007); their objections are to the state policies and agreements which support and create frameworks for world trade. In Purcell's (2008) networks of equivalence in Seattle, a similar, yet more spatially circumscribed network of neighborhood community activists, environmental activists, and a Native American tribe work together to challenge the terms of the environmental clean-up of toxins in and around the Duwamish River. Their target is the corporate interests being held responsible for actually funding the clean-up. The agent helping to hold the corporate interests accountable is the Federal Environmental Protection Agency (EPA). Seattle area environmental activists have been able to form a “chain of equivalence” with the EPA in the Duwamish clean-up in part by inserting themselves into an EPA framework that seeks stakeholder input through a participatory planning structure. The shared interests of the EPA and environmental activists are not obvious or easy to negotiate; the EPA, as a bureaucracy with many actors situated within the US federal system, is positioned as a complex institutional agent. But its particular mandate with regard to environmental protection offers a difficult relation to capital, one sometimes allied with non-state actors seeking limits to capital. Purcell's (2008) account of this case is insightful and engaging. We are highly sympathetic to his project of conceptualizing resistance and, by connection, a better, more complete democracy. But we differ over some of the details—essential details—of how best to enact successful resistances. In his case study of the Duwamish River clean up in Seattle, Purcell (2008) cites government policies as the factor enabling community resistance and involvement. His account is historically detailed—and necessarily so, for the complexities of the state have everything to do with the sedimented and sometimes inherently contradictory nature of its policies and procedures. In brief, he points to the EPA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also known as “Superfund”), and associated environmental laws as a sort of “environmental Keynesianism” that the federal government enacted in the decade of the 1970s (through 1980) (Purcell 2008:137). For Purcell, the neoliberalisation of these laws is evident in the increasing local devolution of governance authority over particular Superfund sites, including his case of the Duwamish River, resulting in “a proliferation of ad hoc and special purpose entities [that] increasingly carries out the everyday decision-making in Superfund cleanups” (2008:137). At the same time, however, Purcell (2008:138) acknowledges “that such ‘flexibilization’ … tends to create political opportunities that social movements can exploit”. We want to engage the idea that such flexible—or Keynesian—tools of the state are levers that can force the state to act in ways that might be counter to capital and in the service of greater democracy. In particular, we hope for a more complex, and, we expect, more practically productive conceptualization of resistance in relation to the state. While Purcell (2008:38, 183, note 2,2) acknowledges resistive possibilities from engagement with the state, he also notes that “the state is fully imbricated in the project of neoliberalization” (a point also made elsewhere; cf Harvey 2005; Holloway 2005; Mitchell 2003; Smith 1996; Wainwright 2007). We do not disagree with the basic contention that the state regulates and administers a hegemonic political economic order of and for capital. But the state is complex; following the persuasive arguments of Laclau and Mouffe (1985) and the example of the EPA in Purcell (2008), the state ought to be conceptualized like any actor: as multifaceted, with many possible subjectivities in relation to any particular conflict. This complexity offers the possibility that the state can be a tool for resistance, one we explore further in the rest of this paper.

#### The master’s tools can be used to dismantle the master’s house

James 09

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In these two instances of successful reappropriation of the master's tools—autonomy/universality and the guitar—the particular, real-world advantages offered by this technique might even require its adoption in instances where nothing else can “do” what it “does.” Indeed, to require that we categorically abandon the master's tools seems itself to be an overly abstract “ideal” that overlooks the often contradictory, historically overdetermined real-world contexts in which all ideas are made meaningful and in which actions unfold. In this world, the stage is already set in certain ways, and sometimes the best or only way to maneuver through its various obstacles requires the repurposing of what we find in/on this stage. If, as Coates's discussion demonstrates, power functions not only at the level of ideology, but also at the level of desire, then feminists cannot avoid engaging dominant structures of feeling and affective conventions (such as those at work in tonal harmony and/or rock music), because these cannot be persuaded or altered by “facts” or arguments (that is, ideological critique or demystification). Reading Butler and Peaches from the perspective of non-ideal theory demonstrates that a reappropriation of the “master's tools” is successful not only when it is more effective or affective than anything else, but also when its use of these tools problematizes or voids the master/slave or insider/outsider hierarchy itself. Under these conditions, the master's tools (for example, “autonomy,”“universality,” and playing the guitar) can indeed bring down the master's house.

#### The law is malleable—debating it is the only way to affect change

Todd Hedrick, Assistant Professor of Philosophy at Michigan State University, Sept 2012, Democratic Constitutionalism as Mediation: The Decline and Recovery of an Idea in Critical Social Theory, Constellations Volume 19, Issue 3, pages 382–400

Habermas’ alleged abandonment of immanent critique, however, is belied by the role that the democratic legal system comes to play in his theory. While in some sense just one system among others, it has a special capacity to shape the environments of other systems by regulating their interaction. Of course, the legal system is not the only one capable of affecting the environments of other systems, but law is uniquely open to inputs from ordinary language and thus potentially more pliant and responsive to democratic will formation: “Normatively substantive messages can circulate throughout society only in the language of law … . Law thus functions as the ‘transformer’ that guarantees that the socially integrating network of communication stretched across society as a whole holds together.”55 This allows for the possibility of consensual social regulation of domains ranging from the economy to the family, where actors are presumed to be motivated by their private interests instead of respect for the law, while allowing persons directed toward such interests to be cognizant that their privately oriented behavior is compatible with respect for generally valid laws. While we should be cautious about automatically viewing the constitution as the fulcrum of the legal order, its status as basic law is significant in this respect. For, recalling Hegel's broader conception of constitutionalism, political constitutions not only define the structure of government and “the relationship between citizens and the state” (as in Hegel's narrower “political” constitution); they also “implicitly prefigure a comprehensive legal order,” that is, “the totality comprised of an administrative state, capitalist economy, and civil society.”56 So, while these social spheres can be conceived of as autonomous functional subsystems, their boundaries are legally defined in a way that affects the manner and degree of their interaction: “The political constitution is geared to shaping each of these systems by means of the medium of law and to harmonizing them so that they can fulfill their functions as measured by a presumed ‘common good’.”57 Thus, constitutional discourses should be seen less as interpretations of a positive legal text, and more as attempts to articulate legal norms that could shift the balance between these spheres in a manner more reflective of generalizable interests, occurring amidst class stratification and cultural pluralism. A constitution's status as positive law is also of importance for fundamentally Hegelian reasons relating to his narrower sense of political constitutionalism: its norms must be public and concrete, such that differently positioned citizens have at least an initial sense of what the shared hermeneutic starting points for constitutional discourse might be. But these concrete formulations must also be understood to embody principles in the interest of all citizens, so that constitutional discourse can be the site of effective democratic will formation concerning the basic norms that mediate between particular individuals and the general interests of free and equal citizens. This recalls Hegel's point that constitutions fulfill their mediational function by being sufficiently positive so as to be publicly recognizable, yet are not exhausted by this positivity – the content of the constitution is instead filled in over time through ongoing legislation. In order to avoid Hegel's foreshortened conception of public participation in this process and his consequent authoritarian tendencies, Habermas and, later, Benhabib highlight the importance of being able to conceive of basic constitutional norms as themselves being the products of public contestation and discourse. In order to articulate this idea, they draw on legal theorists like Robert Cover and Frank Michelman who characterize this process of legal rearticulation as “jurisgenesis”58: a community's production of legal meaning by way of continuous rearticulation, through reflection and contestation, of its constitutional project. Habermas explicitly conceives of the democratic legal order in this way when, in the context of considering the question of how a constitution that confers legitimacy on ordinary legislation could itself be thought to be democratically legitimate, he writes: I propose that we understand the regress itself as the understandable expression of the future-oriented character, or openness, of the democratic constitution: in my view, a constitution that is democratic – not just in its content but also according to its source of legitimation – is a tradition-building project with a clearly marked beginning in time. All the later generations have the task of actualizing the still-untapped normative substance of the system of rights.59 A constitutional order and its interpretive history represent a community's attempt to render the terms under which they can give themselves the law that shapes their society's basic structure and secure the law's integrity through assigning basic liberties. Although philosophical reflection can give us some grasp of the presuppositions of a practice of legitimate lawmaking, this framework of presuppositions (“the system of rights”) is “unsaturated.”60 In Hegelian fashion, it must, to be meaningful, be concretized through discourse, and not in an one-off way during a founding moment that fixes the terms of political association once and for all, but continuously, as new persons enter the community and as new circumstances, problems, and perspectives emerge. The stakes involved in sustaining a broad and inclusive constitutional discourse turn out to be significant. Habermas has recently invoked the concept of dignity in this regard, linking it to the process through which society politically constitutes itself as a reciprocal order of free and equal citizens. As a status rather than an inherent property, “dignity that accrues to all persons equally preserves the connotation of a self-respect that depends on social recognition.”61 Rather than being understood as a quality possessed by some persons by virtue of their proximity to something like the divine, the modern universalistic conception of dignity is a social status dependent upon ongoing practices of mutual recognition. Such practices, Habermas posits, are most fully instantiated in the role of citizens as legislators of the order to which they are subject. [Dignity] can be established only within the framework of a constitutional state, something that never emerges of its own accord. Rather, this framework must be created by the citizens themselves using the means of positive law and must be protected and developed under historically changing conditions. As a modern legal concept, human dignity is associated with the status that citizens assume in the self-created political order.62 Although the implications of invoking dignity (as opposed to, say, autonomy) as the normative core of democratic constitutionalism are unclear,63 plainly Habermas remains committed to strongly intersubjective conceptions of democratic constitutionalism, to an intersubjectivity that continues to be legally and politically mediated (a dimension largely absent from Honneth's successor theory of intersubectivity). What all of this suggests is a constitutional politics in which citizens are empowered to take part and meaningfully impact the terms of their cultural, economic, and political relations to each other. Such politics would need to be considerably less legalistic and precedent bound, less focused on the democracy-constraining aspects of constitutionalism emphasized in most liberal rule of law models. The sense of incompleteness and revisability that marks this critical theory approach to constitutionalism represents a point where critical theories of democracy may claim to be more radical and revisionary than most liberal and deliberative counterparts. It implies a sharp critique of more familiar models of bourgeois constitutionalism: whether they conceive of constitutional order as having a foundation in moral rights or natural law, or in an originary founding moment, such models a) tend to be backward-looking in their justifications, seeing the legal order as founded on some exogenously determined vision of moral order; b) tend to represent the law as an already-determined container within which legitimate ordinary politics takes place; and c) find the content of law to be ascertainable through the specialized reasoning of legal professionals. On the critical theory conception of constitutionalism, this presumption of completeness and technicity amounts to the reification of a constitutional project, where a dynamic social relation is misperceived as something fixed and objective.64 We can see why this would be immensely problematic for someone like Habermas, for whom constitutional norms are supposed to concern the generalizable interests of free and equal citizens. If it is overall the case for him that generalizable interests are at least partially constituted through discourse and are therefore not given in any pre-political, pre-discursive sense,65 this is especially so in a society like ours with an unreconciled class structure sustained by pseudo-compromises. Therefore, discursive rearticulation of basic norms is necessary for the very emergence of generalizable interests. Despite offering an admirably systematic synthesis of radical democracy and the constitutional rule of law, Habermas’ theory is hobbled by the hesitant way he embraces these ideas. Given his strong commitment to proceduralism, the view that actual discourses among those affected must take place during the production of legitimate law if constitutionalism is to perform its mediational function, as well as his opposition to foundational or backward-looking models of political justification, we might expect Habermas to advocate the continuous circulation in civil society of constitutional discourses that consistently have appreciable impact on the way constitutional projects develop through ongoing legislation such that citizens can see the links between their political constitution (narrowly construed), the effects that democratic discourse has on the shape that it takes, and the role of the political constitution in regulating and transforming the broader institutional backbone of society in accordance with the common good. And indeed, at least in the abstract, this is what the “two track” conception of democracy in Between Facts and Norms, with its model of discourses circulating between the informal public sphere and more formal legislative institutions, seeks to capture.66 As such, Habermas’ version of constitutionalism seems a natural ally of theories of “popular constitutionalism”67 emerging from the American legal academy or of those who, like Jeremy Waldron,68 are skeptical of the merits of legalistic constitutionalism and press for democratic participation in the ongoing rearticulation of constitutional norms. Indeed, I would submit that the preceding pages demonstrate that the Left Hegelian social theoretic backdrop of Habermas’ theory supplies a deeper normative justification for more democratic conceptions of constitutionalism than have heretofore been supplied by their proponents (who are, to be fair, primarily legal theorists seeking to uncover the basic commitments of American constitutionalism, a project more interpretive than normative.69) Given that such theories have very revisionary views on the appropriate method and scope of judicial review and the role of the constitution in public life, it is surprising that Habermas evinces at most a mild critique of the constitutional practices and institutions of actually existing democracies, never really confronting the possibility that institutions of constitutional review administered by legal elites could be paternalistic or extinguish the public impetus for discourse he so prizes.70 In fact, institutional questions concerning where constitutional discourse ought to take place and how the power to make authoritative determinations of constitutional meaning should be shared among civil society, legislative, and judiciary are mostly abstracted away in Habermas’ post-Between Facts and Norms writings, while that work is mostly content with the professional of administration of constitutional issues as it exists in the United States and Germany. This is evident in Habermas’ embrace of figures from liberal constitutional theory. He does not present an independent theory of judicial decision-making, but warmly receives Dworkin's well-known model of “law as integrity.” To a certain extent, this allegiance makes sense, given Dworkin's sensitivity to the hermeneutic dimension of interpretation and the fact that his concept of integrity mirrors discourse theory in holding that legal decisions must be justifiable to those affected in terms of publicly recognizable principles. Habermas does, however, follow Michelman in criticizing the “monological” form of reasoning that Dworkin's exemplary Judge Hercules employs,71 replacing it with the interpretive activities of a specialized legal public sphere, presumably more responsive to the public than Hercules. But this substitution does nothing to alleviate other aspects of Dworkin's theory that make a match between him and Habermas quite awkward: Dworkin's standard of integrity compels judges to regard the law as a complete, coherent whole that rests on a foundation of moral rights.72 Because Dworkin regards deontic rights in a strongly realistic manner and as an unwritten part of the law, there is a finished, retrospective, “already there” quality to his picture of it. Thinking of moral rights as existing independently of their social articulation is what moves Dworkin to conceive of them as, at least in principle, accessible to the right reason of individual moral subjects.73 Legal correctness can be achieved when lawyers and judges combine their specialized knowledge of precedent with their potentially objective insights into deontic rights. Fashioning the law in accordance with the demands of integrity thereby becomes the province of legal elites, rendering public discourse and the construction of generalizable interests in principle unnecessary. This helps explain Dworkin's highly un-participatory conception of democracy and his comfort with placing vast decision-making powers in the hands of the judiciary.7 There is more than a little here that should make Habermas uncomfortable. Firstly, on his account, legitimate law is the product of actual discourses, which include the full spate of discourse types (pragmatic, ethical-political, and moral). If the task of judicial decision-making is to reconstruct the types of discourse that went into the production of law, Dworkin's vision of filling in the gaps between legal rules exclusively with considerations of individual moral rights (other considerations are collected under the heading of “policy”75) makes little sense.76 While Habermas distances himself from Dworkin's moral realism, calling it “hard to defend,”77 he appears not to appreciate the extent to which Dworkin links his account of legal correctness to this very possibility of individual insight into the objective moral order. If Habermas wishes to maintain his long held position that constitutional projects involve the ongoing construction of generalizable interests through the democratic process – which in my view is really the heart of his program – he needs an account of legal correctness that puts some distance between this vision and Dworkin's picture of legal elites discovering the content of law through technical interpretation and rational intuition into a fixed moral order. Also puzzling is the degree of influence exercised by civil society in the development of constitutional projects that Habermas appears willing to countenance. While we might expect professional adjudicative institutions to play a sort of yeoman's role vis-à-vis the public, Habermas actually puts forth something akin to Bruce Ackerman's picture of infrequent constitutional revolutions, where the basic meaning of a constitutional project is transformed during swelling periods of national ferment, only to resettle for decades at a time, during which it is administered by legal professionals.78 According to this position, American civil society has not generated new understandings of constitutional order that overcome group divisions since the New Deal, or possibly the Civil Rights era. Now, this may actually be the case, and perhaps Habermas’ apparent acquiescence to this view of once-every-few-generations national conversations is a nod to realism, i.e., a realistic conception of how much broad based, ongoing constitutional discourse it is reasonable to expect the public to conduct. But while a theory with a Left Hegelian pedigree should avoid “the impotence of the ought” and utopian speculation, and therefore ought not develop critical conceptions of legal practice utterly divorced from present ones, such concessions to realism are unnecessary. After all, critical theory conceptions of constitutionalism will aim to be appreciably different from the more authoritarian ones currently in circulation, which more often than not fail to stimulate and sustain public discourse on the basic constitution of society. Instead, their point would be to suggest how a more dynamic, expansive, and mediational conception of constitutionalism could unlock greater democratic freedom and rationally integrated social identities. Given these problems in Habermas’ theory, the innovations that Benhabib makes to his conception of constitutionalism are most welcome. While operating within a discourse theoretic framework, her recent work more unabashedly recalls Hegel's broader conception of the constitution as the basic norms through which a community understands and relates to itself (of which a founding legal document is but a part): a constitution is a way of life through which individuals seek to connect themselves to each other, and in which the very identity and membership of a community is constantly at stake.79 Benhabib's concept of “democratic iterations,” which draws on meaning-as-use theories, emphasizes how meaning is inevitably transformed through repetition: In the process of repeating a term or a concept, we never simply produce a replica of the original usage and its intended meaning: rather, very repetition is a form of variation. Every iteration transforms meaning, adds to it, enriches it in ever-so-subtle ways. In fact, there is really no ‘originary’ source of meaning, or an ‘original’ to which all subsequent forms must conform … . Every iteration involves making sense of an authoritative original in a new and different context … . Iteration is the reappropriation of the ‘origin’; it is at the same time its dissolution as the original and its preservation through its continuous deployment.80 Recalling the reciprocal relationship that Hegel hints at between the narrow “political” constitution and the broader constitution of society's backbone of interrelated institutions, Benhabib here seems to envision a circular process whereby groups take up the conceptions of social relations instantiated in the legal order and transform them in their more everyday attempts to live with others in accordance with these norms. Like Cover and Michelman, she stresses that the transformation of legal meaning takes place primarily in informal settings, where different groups try (and sometimes fail) to live together and to understand themselves in their relation to others according to the terms they inherit from the constitutional tradition they find themselves subject to.81 Her main example of such democratic iteration is the challenge Muslim girls in France raised against the head scarf prohibition in public schools (“L’Affaire du Foulard”), which, while undoubtedly antagonistic, she contends has the potential to felicitously transform the meaning of secularity and inclusion in the French state and to create new forms of togetherness and understanding. But although Benhabib illustrates the concept of democratic iterations through an exemplary episode, this iterative process is a constant and pervasive one, which is punctuated by events and has the tendency to have a destabilizing effect on authority.82 It is telling, however, that Benhabib's examples of democratic iterations are exclusively centered on what Habermas would call ethical-political discourses.83 While otherwise not guilty of the charge,84 Benhabib, in her constitutional theory, runs afoul of Nancy Fraser's critical diagnosis of the trend in current political philosophy to subordinate class and distributional conflicts to struggles for cultural inclusion and recognition.85 Perhaps this is due to the fact that “hot” constitutional issues are so often ones with cultural dimensions in the foreground, rarely touching visibly on distributional conflicts between groups. This nonetheless is problematic since much court business clearly affects – often subtly and invisibly – the outcomes of these conflicts, frequently with bad results.86 For another reason why centering constitutional discourse on inclusion and cultural issues is problematic, it is useful to remind ourselves of Habermas’ critique of civic republicanism, according to which the main deficit in republican models of democracy is its “ethical overburdening” of the political process.87 To some extent, republicanism's emphasis on ethical discourse is understandable: given the level of cooperativeness and public spirit that republicans view as the font of legitimate law, political discourses need to engage the motivations and identities of citizens. Arguably, issues of ethical self-understanding do this better than more abstract or arid forms of politics. But it is not clear that this is intrinsically so, and it can have distorting effects on politics. In the American media, for example, this amplification of the cultural facets of issues is very common; conflicts over everything from guns to taxes are often reduced to conflicts over who is a good, real American and who is not. It is hard to say that this proves edifying; substantive issues of rights and social justice are elided, politics becomes more fraudulent and conflictual. None of this is to deny a legitimate place for ethical-political discourse. However, we do see something of a two-steps-forward-one-step-back movement in Benhabib's advancement of Habermas’ discourse theory of law: although her concept of democratic iterations takes center stage, she develops the notion solely along an ethical-political track. Going forward, critical theorists developing conceptions of constitutional discourse should work to see it as a way of integrating questions of distributional justice with questions of moral rights and collective identities without subordinating or conflating them. 4. Conclusion Some readers may find the general notion of reinvigorating a politics of constitutionalism quixotic. Certainly, it has not been not my intention to overstate the importance or positive contributions of constitutions in actually existing democracies, where they can serve to entrench political systems experiencing paralysis in the face of long term fiscal and environmental problems, and where public appeals to them more often than not invoke visions of society that are more nostalgic, ethno-nationalistic, authoritarian, and reactionary than what Habermas and Benhabib presumably have in mind. Instead, I take the basic Hegelian point I started this paper with to be this: modern persons ought to be able to comprehend their social order as the work of reason; the spine of institutions through which their relations to differently abled and positioned others are mediated ought to be responsive to their interests as fully-rounded persons; and comprehending this system of mediation ought to be able to reconcile them to the partiality of their roles within the universal state. Though modern life is differentiated, it can be understood, when seen through the lens of the constitutional order, as a result of citizens’ jointly exercised rationality as long as certain conditions are met. These conditions are, however, more stringent than Hegel realized. In light of this point, that so many issues deeply impacting citizens’ social and economic relations to one another are rendered marginal – and even invisible – in terms of the airing they receive in the public sphere, that they are treated as mostly settled or non-questions in the legal system consitutues a strikingly deficient aspect of modern politics. Examples include the intrusion of market logic and technology into everyday life, the commodification of public goods, the legal standing of consumers and residents, the role of shareholders and public interests in corporate governance, and the status of collective bargaining arrangements. Surely a contributing factor here is the absence of a shared sense of possibility that the basic terms of our social union could be responsive to the force that discursive reason can exert. Such a sense is what I am contending jurisgenerative theories ought to aim at recapturing while critiquing more legalistic and authoritarian models of law. This is not to deny the possibility that democratic iterations themselves may be regressive or authoritarian, populist in the pejorative sense. But the denial of their legitimacy or possibility moves us in the direction of authoritarian conceptions of law and political power and the isolation of individuals and social groups wrought by a political order of machine-like administration that Horkheimer and Adorno describe as a main feature of modern political domination. Recapturing some sense of how human activity makes reason actual in the ongoing organization of society need not amount to the claim that reason culminates in some centralized form, as in the Hegelian state, or in some end state, as in Marx. It can, however, move us to envision the possibility of an ongoing practice of communication, lawmaking, and revision that seeks to reconcile and overcome positivity and division, without the triumphalist pretension of ever being able to fully do so.

#### Intervening in the state is not weak reformism, but radical experimentation. Predetermining the government as an impenetrable structure repeats the worst of structuralist irresponsibility by needlessly bracketing leftist politics into irrelevance.

Connolly ’12 William E. Connolly, Krieger-Eisenhower Professor of Political Science at Johns Hopkins University, “Steps toward an Ecology of Late Capitalism,” Theory & Event, Vol. 15, Issue 1, 2012, Muse

A philosophy attending to the acceleration, expansion, irrationalities, interdependencies and fragilities of late capitalism suggests that we do not know with confidence, in advance of experimental action, just how far or fast changes in the systemic character of neoliberal capitalism can be made. The structures often seem solid and intractable, and indeed such a semblance may turn out to be true. Some may seem solid, infinitely absorptive, and intractable when they are in fact punctuated by hidden vulnerabilities, soft spots, uncertainties and potential lines of flight that become apparent as they are subjected to experimental action, upheaval, testing, and strain. Indeed, no ecology of late capitalism, given the variety of forces to which it is connected by a thousand pulleys, vibrations, impingements, dependencies, shocks and thin threads, can specify with supreme confidence the solidity or potential flexibility of the structures it seeks to change. The strength of structural theory, at its best, was in identifying institutional intersections that hold a system together; its conceit, at its worst, was the claim to know in advance how resistant those intersections are to potential change. Without adopting the opposite conceit, it seems important to pursue possible sites of strategic action that might open up room for productive change. Today it seems important to attend to the relation between the need for structural change and identification of multiple sites of potential action. You do not know precisely what you are doing when you participate in such a venture. You combine an experimental temper with the appreciation that living and acting into the future inevitably carries a shifting quotient of uncertainty with it. The following tentative judgments and sites of action may be pertinent.

### Theory

#### First, CX checks on all T and theory on the advocacy. a) Ensures substantive education since we’ll be able to avoid theory in a bunch of instances, which ensures debate about the topic, which is applicable to the real world, b) mutually exclusive interps means I’m forced to take a stance but if I have no idea which you would prefer I just do so arbitrarily so you shouldn’t punish me.

#### Second, if I win a counter-interpretation to T or theory, vote aff. Time-pressed rebuttals means the aff needs the ability to collapse to theory in order to overcome the inequity of the speech times. Otherwise the 2NR would also moot a large portion of the 1AR by kicking theory. Prefer time skew to other links to fairness because it’s quantifiable and verifiable.

#### Third, reasonability and drop the argument on T. The briteline is if it’s been disclosed, defends a ban everywhere in the US for all guns and all individuals, provides link and impact turn ground, and has a CX concession spike. Prefer: a) Only the aff has the burden of meeting topicality, so it’s nonreciprocal to hold it to the same standards as other theory, b) mutually exclusive legitimate T interps—I have to choose one but you could read T no matter what which skews my strat—best possible interpretation is a bad standard, c) research skills—incentivizes the neg to actually prep out slightly more obscure affs instead of reading T which outweighs since it’s one of the foremost educational benefits of debate, d) time skew—it’s nearly impossible to invest enough time on T in the 1AR to win under a normal paradigm without undercovering everything else—makes a 2NR collapse way too easy.

#### Fourth, neg abuse outweighs aff abuse. a) Some aff abuse is necessary to overcome neg side bias and time skew, b) aff speaks in the dark while the neg is reactive, which means when assessing whether their arguments are abusive they can compare directly with the circumstances of the round—I have to do so hypothetically.

#### Fifth, presume aff. 7-4-6-3 time skew means a) if we’re tied, I’ve done the better debating and b) It’s fairer to give the aff the advantage of being able to win by eliminating all offense than the neg.

#### Sixth, no 2NR theory or new neg RVI arguments. 2:1 time trade-off between the 2NR and the 2AR means giving them the ability to uplayer in the last speech is devastating to me. It’s also too late to start that debate—usually becomes irresolvable.

#### Seventh, neg may only read 1 T or theory shell. Multiple shells spread out the 1AR and allow the 2NR to collapse to whichever shell was undercovered, meaning I wasn’t given a fair shot at justifying my practice. Multiple rounds solve your offense since we can check lots of abusive practices over time.

# **Frontlines**

## XT

#### Extend Gyrz 11--the aretaic precludes the deontic—that means only fws that can explain things like “praiseworthy” matter—takes out the NC because you can only delinate between good and bad—it’s a question of descriptions of agents and of actions

#### Extend that academic reflection fails—ethics must come from something intrinsically ethical since a) academia presumes things like honesty are good b) it’s descriptive, not prescriptive

#### Extend Reader 2k—virtue ethics is a social developmental phenomenon—only way to be prescriptive, not descriptive—takes out “intuitions bad” args: only way to avoid skep and means morality is learned, not proved academically

#### Extend Athanassoulis—all actions aim towards Eudaimonia, or human flourishing—that means virtues are things that facilitate that

#### Extend Geach 56— “good” in the abstract doesn’t exist, only being a good something, in this case, human—precedes other identities

#### Extend that it’s not util—a) aretaic, not deontic—it’s about character b) not hedonistic c) not consequentialist; we value virtues, not end states

#### Extend McGinnis 06, the rule-following paradox—we only know how rules are followed in very few instances so they’re dependent on communal intepretation—means ethics a) can’t be rule-based b) must be based in social development—takes out the NC

## Framework

### AT: SV

#### 1. Aretaic first—structural violence doesn’t answer the question of character but merely one of particular actions

#### 2. Begs the question of what oppression/structural violence/etc. actually is and specifically how we fight it—only my framework contextualizes this since it provides an account of positive habits—obviously oppression is bad but you need a specific method—my framework is also not ideal since it’s grounded in social conditions, meaning it provides the perfect middle ground

#### 3. Impossible to weigh between oppression impacts if it’s not contextualized in the context of util/deont etc. since we don’t know what types or instances of oppression are worse under their standard

### AT: Deont

#### 1. Aretaic first—deont doesn’t answer the question of character but merely one of particular actions

#### **2. Tailoring objection—I can tailor my maxims to become specific enough to be universal. For example, I can will the maxim of lying in a specific circumstance only, as when universalized that would not create a contradiction in willing since not everyone would lie constantly.**

#### 3. No a priori reason—humans are tainted with cognitive biases—that’s why we need virtues to cultivate better character and work towards living a more rational *life*

#### 4. No rules could be known to be applied in a given situation – for example any action could accord with the categorical imperative because you might deem yourself the exception and all previous applications were in the schmategorical imperative. Only publically grounded rules are meaningful.

#### **5. All practical reasoning requires an ultimate end to avoid infinite regress—that end is eudaimonia**

Russell (Daniel C. Russell, “Virtue ethics, happiness, and the good life,” *The Cambridge Companion to Virtue Ethics* pg. 8-9) OS \*\*\*bracketed for gendered language\*\*\*

Take the first idea first, beginning with the notion of doing some- thing for a reason. We don't do everything for a reason: someone might tap his foot while listening to music, but not for any reason. But think about someone making something: perhaps he begins with a long, flat piece of wood, cuts it into a certain shape, rounds one end of it into a handle, gives the other end of it a curved, flat face, and so on. We understand [their] reason for doing all of these things when we understand what [their] end is - in this case, making a cricket bat. Furthermore, we can ask about his reason for having that end; perhaps it is his job. We can keep going: someone employs him in order to sell cricket bats; people buy cricket bats to play cricket; and so on. In each case, we explain what people do in terms of their ends, and these ends fit together into a hierarchy, each end explained by the next end in this "chain" of ends. What do we mean by doing something "for the sake of" an end? The bat-making example gives one answer: we make a bat for the sake of selling it - making the bat is a means to that end. But that is only one answer; obviously, there are many things we do for their own sake, such as playing cricket. It is also possible to do something both for its own sake and for the sake of another end: for instance, a person might make bats both as a hobby and as a means of making some extra money. Or consider someone who plays a game of cricket for the sake of enjoying a sunny day. Obviously, playing cricket is not a means to the end of enjoying the day: the bat-maker thinks how to make the bat so that someone will want to buy it, but the player does not think how to play the next ball so that he can enjoy his day. Rather, playing cricket is for the sake of enjoying the day in the sense that it is a way of enjoying the day; and in order to enjoy a day of cricket, one must play cricket on its own terms, for its own sake.' And so on. The point is that we should interpret the "for the sake of" relation in these chains as broadly as the variety of our reasons demands. Now, each "chain" has to end somewhere. If it were infinitely long or looped back on itself, then we could never say what the whole chain was for the sake of, and practical reasoning couldn't halt anywhere; the thought that the whole enterprise might have a point couldn't withstand scrutiny} This is why practical reasoning requires a final end that all of the other ends in the chain are for the sake of, but which is not for the sake of anything else.

#### 6. We cannot understand the concept of human freedom except within a paradigm of human flourishing.

Keller (Tim Keller. The Reason for God: Belief in an Age of Skepticism. Penguin Group USA. 2008)

Christianity is supposedly a limit to personal growth and potential because it constrains our freedom to choose our own beliefs and practices. Immanuel Kant defined an enlightened human being as one who trusts in his or her own power of thinking, rather than in authority or tradition.27 This resistance to authority in moral matters is now a deep current in our culture. Freedom to determine our own moral standards is considered a necessity for being fully human. This oversimplifies, however. Freedom cannot be defined in strictly negative terms, as the absence of confinement and constraint. In fact, in many cases, confinement and constraint is actually a means to liberation. If you have musical aptitude, you may give yourself to practice, practice, practice the piano for years. This is a restriction, a limit on your freedom. There are many other things you won’t be able to do with the time you invest in practicing. If you have the talent, however, the discipline and limitation will unleash your ability that would otherwise go untapped. What have you done? You’ve deliberately lost your freedom to engage in some things in order to release yourself to a richer kind of freedom to accomplish other things. This does not mean that restriction, discipline, and constraint are intrinsically, automatically liberating. For example, a five-foot-four, 125-pound young adult male should not set his heart on becoming an NFL lineman. All the discipline and effort in the world will only frustrate and crush him (literally). He is banging his head against a physical reality—he simply does not have the potential. In our society many people have worked extremely hard to pursue careers that pay well rather than fit their talents and interests. Such careers are straitjackets that in the long run stifle and dehumanize us. Disciplines and constraints, then, liberate us only when they fit with the reality of our nature and capacities. A fish, because it absorbs oxygen from water rather than air, is only free if it is restricted and limited to water. If we put it out on the grass, its freedom to move and even live is not enhanced, but destroyed. The fish dies if we do not honor the reality of its nature. In many areas of life, freedom is not so much the absence of restrictions as finding the right ones, the liberating restrictions. Those that fit with the reality of our nature and the world produce greater power and scope for our abilities and a deeper joy and fulfillment. Experimentation, risk, and making mistakes bring growth only if, over time, they show us our limits as well as our abilities. If we only grow intellectually, vocationally, and physically through judicious constraints—why would it not also be true for spiritual and moral growth? Instead of insisting on freedom to create spiritual reality, shouldn’t we be seeking to discover it and disciplining ourselves to live according to it? The popular concept—that we should each determine our own morality—is based on the belief that the spiritual realm is nothing at all like the rest of the world. Does anyone really believe that? For many years after each of the morning and evening Sunday services I remained in the auditorium for another hour to field questions.

### AT: Util

#### 1. Aretaic first—deont doesn’t answer the question of character but merely one of particular actions

#### 2. Util calc is impossible—consequences span infinitely far into the future, meaning it’s impossible to figure out whether any action is net good or bad.

#### 3. Aggregation fails—two headaches don’t equal a migraine—different instances of pain and pleasure are not just quantitatively but also *qualitatively* different

#### 4. Act-omission distinction—util leads to infinite obligations because we are constantly responsible for omissions. That means we are always fulfilling an infinitely small percent of all our obligations, so it’s impossible to be moral.

#### 5. Happiness may be preferable. However, objects and conditions that bring us happiness cannot hold value in themselves, because their goodness is conditional. Only virtues that contribute to a content life can possess intrinsic value.

Baltzly (Dirk Baltzly. Stoicism. Stanford Encyclopedia of Philosophy. <http://plato.stanford.edu/entries/stoicism/#Eth>. First published Mon Apr 15, 1996; substantive revision Fri Dec 6, 2013)

The best way into the thicket of Stoic ethics is through the question of what is good, for all parties agree that possession of what is genuinely good secures a person's happiness. The Stoics claim that whatever is good must benefit its possessor under all circumstances. But there are situations in which it is not to my benefit to be healthy or wealthy. (We may imagine that if I had money I would spend it on heroin which would not benefit me.) Thus, things like money are simply not good, in spite of how nearly everyone speaks, and the Stoics call them ‘indifferents’ (Diog. Laert., 58A)—i.e., neither good nor bad. The only things that are good are the characteristic excellences or virtues of human beings (or of human minds): prudence or wisdom, justice, courage and moderation, and other related qualities. These are the first two of the ‘Stoic paradoxes’ discussed by Cicero in his short work of that title: that only what is noble or fine or morally good (kalon) is good at all, and that the possession (and exercise) **of the virtues is both necessary and sufficient for happiness**. But the Stoics are not such lovers of paradox that they are willing to say that my preference for wealth over poverty in most circumstances is utterly groundless. They draw a distinction between what is good and things which have value (axia). Some indifferent things, like health or wealth, have value and therefore are to be preferred, even if they are not good, because they are typically appropriate, fitting or suitable (oikeion) for us.

#### 6. Framing: we both agree happiness is important—the question becomes merely how to apply such a principle to ethics, so if I win theories should be aretaic and not deontic then I win the framework debate

#### 7. Turns util—if no one is virtuous then they can’t flourish, meaning there would be no value to life

### AT: Virtues are Subjective

#### 1. Everyone seeks Eudaimonia, meaning we simply determine which virtues are characteristic of a flourishing character—this seems pretty intuitive, for instance it’s hard to say how someone who fails to remain humble and listen to others can truly feel fulfilled. There may be different conceptions of fulfillment, but there are clearly common virtues that assist people in achieving that end.

## Contention

### AT: Doesn’t Justify Gun Laws

#### **1. Author concludes gun laws are good**

Trivigno ’13 (Franco, philosophy professor at Marquette University, “Guns and Virtue: The Virtue Ethical Case against Gun Carrying,” *Public Affairs Quarterly* Vol. No. 4 October 2013, <https://www.academia.edu/4778227/Guns_and_Virtue_The_Virtue_Ethical_Case_against_Gun_Carrying_Public_Affairs_Quarterly_2013_>) OS

These considerations give an individual a set of moral reasons not to carry a gun, despite the alleged goods of safety and less crime overall. To risk your character to save your skin, or your wallet, is a trade-off that indicates, from a virtue ethical perspective, priorities that are fundamentally mistaken." How would this line of virtue ethical reasoning cash out on the political level, with respect to more or less restrictive gun laws? We might briefly envision a bottom-up strategy for generating a virtue political principle. One might plausibly argue that since individual citizens would prefer a more rather than less virtuous citizenry, they should prefer, other things being equal, that fewer of their fellow citizens carry guns." They should, thus, in most twenty-first century democratic republics, support politicians who favor more restrictive stuns laws.

#### 2. HAHA—I don’t defend a policy—I defend the state of affairs in which guns are banned since the rez is phrased that way—means I just have to win that’s a more virtuous world than the squo, not that the actual action of banning is good.

#### 3. States were created with the intention of creating conditions possible for flourishing—means they’re justified in coercing people to that end

#### 4. It’s virtuous to encourage virtue in others so the offense still links to the standard

### AT: Doesn’t Justify Ban

#### 1. Necessary—some of the offense may discuss carrying but concealed carry means we have to ban ownership to solve

#### 2. Ownership makes carrying guns as a habit much more likely so it’s net better than the squo

#### 3. Owning a gun isn’t virtuous—still links to all the arguments about risk perception, dehumanization, etc. even if to a slightly lesser extent

# Theory Blocks

## AT: Spec

### 1AR

#### Counter-interp: [varies]

#### 1. Limits—spec-ing other things explodes aff ground—there would be hundreds of possible affs all with different harms areas—neg couldn’t prep them all

#### 2. Predictability—there are an infinite number of other things I could have specified—would be a lot harder for the neg to predict—the USFG is the only federal actor so counter-interp solves

#### 3. Prep skew—you force me to either find incredibly specific evidence or lose the solvency debate—kills quality aff ground

#### 4. Philosophical education—topic education matters but hyper-specific questions of implementation trade off with a broader philosophical discussion of principles—important since it’s 100% unique to LD

### 1AR CX Checks Shell

#### Extend the interpretation—for all theoretical objections regarding the aff advocacy, the interpretation must be checked in cross-examination, giving me an opportunity to comply or conflict.

#### Violation: They didn’t

#### Reasons to prefer:

#### 1. Fairness—

#### There are mutually exclusive interps on every topic, i.e. must spec, can’t spec. There was no way for me to predict how you wanted my advocacy to be. That means reading an interp not checked in CX is unfair—

#### a. You’re forcing me to defend an implicit stance that I don’t genuinely feel the need to defend. I may have arbitrarily chosen one side of a two-sided T debate, simply because I had to—that means I can’t be expected to provide an offensive reason for all of my practices. Kills qualitative theory ground—key to fairness because I need good args to win.

#### b. Means they can uplayer and moot the aff regardless of what I do—that means there is literally no way for me to avoid having my offense disappear every single round. Skews my strat—kills fairness because I need a coherent strategy to win.

#### 2. Education—causes crowdout…

#### Metatheory first: a. abuse on theory means I wasn’t given a fair shot at justifying my practice so you can’t vote on it, b. abuse on theory is worse since it’s a game-over issue

### Must Disclose Spec Shells

#### Interpretation: All negative theory or T interpretations that require the aff to specify something they didn’t must be disclosed on the NDCA LD wiki before they’re read.

#### Violation: They don’t

#### Prefer: strat skew—there are an infinite number of things some people want me to spec—I can’t possibly predict what you want—most spec shells have hyper-specific interps so if disclosed I could have seen them and realized they’re a good norm—also bidirectional interps mean I might have thought your spec shell was true but was simply too scared of OSPEC to comply—kills fairness since I shouldn’t be forced to justify my practice

#### Meta-theory first—a) gateway issue—proves I wasn’t given a fair shot to justify my practice so you can’t vote on the original shell, b) abuse on theory outweighs since theory is a game-over issue

# NC Blocks

## AT: Deont

### Libertarianism False

#### The state can coerce to preserve freedom—key to avoid contradiction

Kant ’81 (Immanuel Kant, *Critique of Pure Reason*, 1781) bracketed for gendered language

When I declare (by word or deed), “I will that an external thing shall be mine,” I thereby declare it obligatory for everyone else to refrain from using the object of my will. This is an obligation that no one would have apart from this juridical act of mine. Included in this claim, however, is an acknowledgment of being and that I’m reciprocally bound to everyone else to exercise a similar and equal restraint with respect to what is theirs. The obligation involved here comes from a universal rule of the external juridical relationship that is, the civil society. Consequently, I am not bound to leave what is another’s property untouched if everyone else does not in turn guarantee to me with regard to what is mine that [they] will act in accordance with exactly the same principle. This guarantee does not require a special juridical act, but is already contained in the concept of being externally juridically bound to a duty Verpflichtung on account of the universality and hence also the reciprocity of an obligation coming from a universal rule. Now, with respect to an external and contingent possession, a unilateral Will cannot serve as a coercive law for everyone, since that would be a violation of freedom in accordance with universal laws. Therefore, only a Will binding everyone else—that is, collective universal (common), and powerful Will—is the kind of Will that can provide the guarantee required. The condition of being subject to general external (that is, public legislation that is backed by power is the civil society. Accordingly, a thing can be externally yours or mine only in a civil society.

### AT: Offense

#### 1. Gun ownership hinders freedom—possessing dangerous weapons is problematic even if we don’t use them—for example it’s a violation of the freedom of those around me for me to build a nuclear bomb and keep it in my home—also if I force others around me to feel in danger then that violates them—if they don’t consent to gun ownership in their neighborhood then that’s offense

#### 2. Tiebreaker question: if bans don’t violate freedom then we default to a question of imperfect duties—aff is key to the duty of beneficence since we have an obligation to try to make our communities safer and help others lead better/MORE VIRTUOUS lives—means the contention turns the NC

## AT: Self-Ownership

### ---Overview

#### 1. Aretaic first—argumentative ethics doesn’t answer the question of character but merely one of particular *actions*—doesn’t say what a

#### 2. Can’t ground ethics—what happens to ethics if we stopped arguing? Only my fw gives a full account of ethics—means it precludes

#### 3. No a priori reason—humans are tainted with cognitive biases—that’s why we need virtues to cultivate better character and work towards living a more rational life—that takes out the “contradiction” justification since it relies on a priori reason

#### 4. False—in the squo, we don’t have total freedom but can still make arguments—you don’t need absolute freedom

#### 5. Guns aren’t key—other methods of self-defense solve—no offense

#### 6. Turn—we cannot understand the concept of human freedom except within a paradigm of human flourishing.

Keller (Tim Keller. The Reason for God: Belief in an Age of Skepticism. Penguin Group USA. 2008)

Christianity is supposedly a limit to personal growth and potential because it constrains our freedom to choose our own beliefs and practices. Immanuel Kant defined an enlightened human being as one who trusts in his or her own power of thinking, rather than in authority or tradition.27 This resistance to authority in moral matters is now a deep current in our culture. Freedom to determine our own moral standards is considered a necessity for being fully human. This oversimplifies, however. Freedom cannot be defined in strictly negative terms, as the absence of confinement and constraint. In fact, in many cases, confinement and constraint is actually a means to liberation. If you have musical aptitude, you may give yourself to practice, practice, practice the piano for years. This is a restriction, a limit on your freedom. There are many other things you won’t be able to do with the time you invest in practicing. If you have the talent, however, the discipline and limitation will unleash your ability that would otherwise go untapped. What have you done? You’ve deliberately lost your freedom to engage in some things in order to release yourself to a richer kind of freedom to accomplish other things. This does not mean that restriction, discipline, and constraint are intrinsically, automatically liberating. For example, a five-foot-four, 125-pound young adult male should not set his heart on becoming an NFL lineman. All the discipline and effort in the world will only frustrate and crush him (literally). He is banging his head against a physical reality—he simply does not have the potential. In our society many people have worked extremely hard to pursue careers that pay well rather than fit their talents and interests. Such careers are straitjackets that in the long run stifle and dehumanize us. Disciplines and constraints, then, liberate us only when they fit with the reality of our nature and capacities. A fish, because it absorbs oxygen from water rather than air, is only free if it is restricted and limited to water. If we put it out on the grass, its freedom to move and even live is not enhanced, but destroyed. The fish dies if we do not honor the reality of its nature. In many areas of life, freedom is not so much the absence of restrictions as finding the right ones, the liberating restrictions. Those that fit with the reality of our nature and the world produce greater power and scope for our abilities and a deeper joy and fulfillment. Experimentation, risk, and making mistakes bring growth only if, over time, they show us our limits as well as our abilities. If we only grow intellectually, vocationally, and physically through judicious constraints—why would it not also be true for spiritual and moral growth? Instead of insisting on freedom to create spiritual reality, shouldn’t we be seeking to discover it and disciplining ourselves to live according to it? The popular concept—that we should each determine our own morality—is based on the belief that the spiritual realm is nothing at all like the rest of the world. Does anyone really believe that? For many years after each of the morning and evening Sunday services I remained in the auditorium for another hour to field questions.

### ---AT: Arg Ethics

#### 1. Argumentative ethics conflates liberty rights with claim rights.

Brennan 13 (Jason Brennan, “Hoppe’s Argumentation Ethics Argument Refuted in Under 60 Seconds, Dec 12 2013, http://bleedingheartlibertarians.com/2013/12/hoppes-argumentation-ethics-argument-refuted-in-under-60-seconds//FT)

**Begin with some terms from political philosophy:** **A *liberty right* is something that grants me permission to do something. A *claim right* is something that entails others have obligations**, responsibilities, or duties **toward me.** So, for instance, suppose you believe: “Everyone has the right to do whatever he pleases; no one has any duties to anyone else.” This sentence asserts that people have liberty rights to do anything, but have no claim rights at all. In contrast, take: “I have the right not to be taxed–the government shouldn’t take my money.” Here I assert a claim right to my money–I assert that government agents have duties not to take my money from me. So, to review, by definition: “X has a liberty right to do Y” means “It is morally permissible for X to Y.” “X has a claim right to do Y” means “Others have a duty not to interfere with X when he Ys.” You can have a liberty right without a claim right. So, for instance, Hobbes thinks in the state of nature we all have liberty rights to kill one another, but he doesn’t think we have claim rights not to be killed. **With that distinction, consider Hans Hermann-Hoppe’s argumentation ethics argument for libertarian self-ownership.** Hoppe claims that the act of trying to justify a theory that rejected libertarian self-ownership is a performative contradiction—the act presupposes the truth of libertarian self-ownership. As he explains in *The Economics and Ethics of Private Property*: *It must be considered the ultimate defeat for an ethical proposal if one can demonstrate that its content is logically incompatible with the proponent’s claim that its validity be ascertain- able by argumentative means. To demonstrate any such incompatibility would amount to an impossibility proof; and such proof would constitute the most deadly smash possible in the realm of intellectual inquiry … Such property right in one’s own body must be said to be justified a priori. For anyone who would try to justify any norm whatsoever would already have to presuppose an exclusive right to control over his body as a valid norm simply in order to say ‘I propose such and such’. And anyone disputing such right, then, would become caught up in a practical contradiction, since arguing so would already implicitly have to accept the very norm which he was disputing.* [See here for more.](https://mises.org/daily/5322/) **Okay, 60 seconds. Go!** For the sake of argument, on Hoppe’s behalf, grant that by saying “I propose such and such,” I take myself to have certain rights over myself. I take myself to have some sort of right to say, “I propose such and such.” I also take you to have some sort of right to control over your own mind and body, to control what you believe. (Nota bene: I don’t think Hoppe can even get this far, but I’m granting him this for the sake of argument.) But **all I need to avoid a performative contradiction here is for me to have a *liberty right* to say, “I propose such and such.” I need not presuppose I have a claim right** to say “I propose such and such.” Instead, at most, **I presuppose that it’s permissible for me to say, “I propose such and such”. I also at most presuppose that you have a liberty right to believe what I say. I do not need to presuppose that you have a claim right to believe what I say. However, libertarian self-ownership theory consists of claim rights. So, by saying, “I propose such and such,” at most I presuppose the permissibility** of my saying “I propose such and such” and of your believing “such such,” **but** I don’t presuppose **[not] that anyone or anything has any claim rights or duties at all. Hoppe’s argument illicitly conflates a liberty right with a claim right, and so fails**. **Q.E.D.** Since Hoppe’s argument is complete nonsense, it has other fatal flaws aside from the one I described above. For further refutation, see here:

#### 2. There are assumed premises that make their argument flawed

Carlin (JC Anarchy Theory, “Argumentation Ethics Overview,” http://jamescarlin.wikidot.com/critique-of-argumentation-ethics//FT)

To borrow a phase from Ayn Rand, "check your premises." Two hidden premises of A.E. are: premise 1: Argumentation Ethics is superior to other factors of human interaction. premise 2: The act of argumentation 'proves' one must always accept the particular collection of ethics as described by A.E. advocates. To quickly demonstrate the flaw, let's consider "showering ethics" premise 1: Showering Ethics is superior to all other factors of human interaction. premise 2: The act of showering 'proves' one must always accept the particular collection of ethics descriptive of showering. Showering and Argumentation are [is] merely two [a] momentary actions that people engage in for particular reasons, whereby each action has only limited implications. The mere momentary act of arguing or showering does not logically imply or conclude that one always accepts a particular set of ethics, beliefs, pursuits, and desires that are descriptive of or extrapolated from argumentation/showering. Further, this action has very limited implications on where any showering or arguing fits among other values, desires and pursuits.

#### 3. AE functions on flawed logic --- and there’s no impact to performative contradictions

Carlin (JC Anarchy Theory, “Argumentation Ethics Overview,” http://jamescarlin.wikidot.com/critique-of-argumentation-ethics//FT)

The prior flawed premises are often compounded by similarly flawed logic and debating styles. Returning to **[take] showering ethics [for]** : example: One engages in showering, therefore one values being clean. Because one values being clean, they value not being dirty. Therefore acts which cause a person to become dirty are undesirable. Therefore, who showers does not enjoy becoming dirty and covered in sweat. Therefore, a person who showers does not desire playing football. In nearly every A.E. proposition I have observed,I have noticed [there are] similar logic structures. The debater take a concept "Step A often suggests Step B" and restate it as "Step A always proves Step B." The flaw is subtle enough that it will often [to] go unnoticed by a casual observer. Further, I've noticed that an A.E. debater will often suggest "Persons who do action-A, but don't support-B are engaging in a performative contradiction" (a.k.a. hypocrisy). Perhaps when the showering results in fewer football games, I might take this statement seriously.

#### 4. Weighing – prefer my framework --- more risk of being true

Carlin (JC Anarchy Theory, “Argumentation Ethics Overview,” http://jamescarlin.wikidot.com/critique-of-argumentation-ethics//FT)

Similar to the diagram at the beginning of this article, **each step in an A.E. argument tends to introduce an increasingly large margin of error**. **When compounding multiple steps of "often true" statements, the accuracy diminishes at each step, which may eventually result in a complete falsehood** that resembles the following diagram:

### ---AT: Hoppe

#### 1. Fallacy of origin—just because it’s necessary doesn’t mean it’s good

#### 2. No impact to performative contradiction—terminal defense on fw

#### 3. Infinitely regressive—we need air to make arguments, but we don’t respect air

## AT: Constitution

### 1AR

#### 1. Amendments don’t matter under the framework since they’re not the original constitutive duties of the USFG

#### 2. If they do matter, normal means of the plan could include passing an amendment so no risk of offense

#### 3. Second amendment justifies gun control

Gopnik 10/2 (Adam Gopnik, staff writer, the New Yorker, “The Second Amendment is a Gun-Control Amendment,” The New Yorker, 2015)

In point of historical and constitutional fact, nothing could be further from the truth: the only amendment necessary for gun legislation, on the local or national level, is the Second Amendment itself, properly understood, as it was for two hundred years in its plain original sense. This sense can be summed up in a sentence: if the Founders hadn’t wanted guns to be regulated, and thoroughly, they would not have put the phrase “well regulated” in the amendment. (A quick thought experiment: What if those words were not in the preamble to the amendment and a gun-sanity group wanted to insert them? Would the National Rifle Association be for or against this change? It’s obvious, isn’t it?)

#### 4. Since the constitution was established in the 1700s, the arms it’s referring to are old rifles not handguns—couldn’t possibly be prescribing a duty regarding a modern phenomenon—for example if we didn’t call handguns arms at all when we invented them you couldn’t say it would apply

# K Blocks

## Virtue Ethics Good

### Decent and Short

#### Virtue ethics’ moral holism can provide a descriptive and normative assessment of oppression

Smith 15 (Trevor W., A.A., B.A., M.A., Virtue, Oppression, and Resistance Struggles, Marquette University Dissertation, epublications.marquette.edu/cgi/viewcontent.cgi?article=1562&context=dissertations\_mu)

Following in the vein of these defenses of virtue (and therein the critiques made of other forms of moral theories), this project utilizes **the comprehensive framework of virtue ethics as a valuable tool for the evaluation of oppression,** and the benefit of such an approach is a natural extension of these general arguments. **Oppression**, as it will be shown, **is an extremely complex social phenomenon and exerts its harmful influence on the oppressed in a vast array of ways, and** virtue ethics’ moral holism is especially apt at being able to not only descriptively account for the affected aspects of life but also provide a normative assessment of these effects.

### Good and Medium

#### Virtue ethics helps explain why oppression is so bad, tracing all of its devastating effects

Smith 15 (Trevor W., A.A., B.A., M.A., Virtue, Oppression, and Resistance Struggles, Marquette University Dissertation, epublications.marquette.edu/cgi/viewcontent.cgi?article=1562&context=dissertations\_mu)

The harms presented here, which are done as a way of **substantiating oppression's** damning **influence**, furthers scholarship on the (im)morality of oppression in two important ways. First, they descriptively present an analysis of oppression's influence **from within the virtue ethics tradition.** The normative framework of virtue ethics requires a uniquely virtue based account of oppression's harm and this chapter has sought to **provide** this **detailed analysis**. Secondly, **the harms** presented here, **as understood by virtue ethics, take a large and broad look at the human life. The framework of virtue ethics attempts to encompass and engage in all aspects of human life treating human** 99 **flourishing as the result of a complete life. Connecting the harmful effects of oppression via virtue ethics uses this encompassing framework to trace the harmful effects of oppression to our desires, our emotions, our choices, our habits, our interactions with others, and our political existence as social beings. Virtue ethics**, and the account of oppression given here, **attempts to meet these ethical demands in the wide and varied arenas in which the ethical life is lived and developed. The resulting picture of oppression and its harms demonstrates the extent and depth of oppression's devastating effects on the oppressed**.

### Probably Not

#### Oppression prevents proper exercise of virtue

Smith 15 (Trevor W., A.A., B.A., M.A., Virtue, Oppression, and Resistance Struggles, Marquette University Dissertation, epublications.marquette.edu/cgi/viewcontent.cgi?article=1562&context=dissertations\_mu)

It is clear that external influences are capable of effecting changes in the emotional and psychological states of moral agents. **Oppression, as a force, affects** the **moral character** of individuals **and** thus the existence of oppression **limits** individuals in their **ability to be virtuous.** This can be seen both in relation to the moral virtues as well as the intellectual virtues. Here, I wish to show how this is the case. In general, we need to see how virtues are affected by oppression and this effect manifests in three broad ways. **First, some virtues are made a practical impossibility for oppressed individuals** and the possibility for the achievement of these virtues is eliminated. **Second, some virtues** are affected in that their **acquisition is made extremely difficult** for the oppressed person. In a **third** way, **some virtues become** what Tessman has called “**burdened**,” **in that the proper and appropriate mean for the virtue is extreme.**34 In this third case, **the agent does in fact inculcate a virtue** as opposed to a vice **but** the virtue, **due to the existence of oppression, is damaging and dangerous to its possessor**. To illustrate how the virtues are (a) eliminated, (b) affected, or, (c) burdened, the specific moral virtues of temperance, courage, and so-called "good-temperedness," along with the intellectual virtues of wisdom and knowledge, will be outlined. These virtues illustrate, in specific detail, how the virtues are unduly manipulated by oppression in these three ways. This manipulation of virtue curtails agents in their habituation of these moral virtues and limits the availability of virtue and therefore flourishing. In each of these instances (and in reference to both types of virtue), it is essential that we see how oppression acts as a causal force which inhibits individuals from developing the virtues necessary for the achievement of happiness (flourishing).

## AT: Gourevitch K

### TL

#### 1] Non-unique—lots of gun laws in the squo are already enforced badly—no reason a handgun ban would be uniquely worse

#### 2] Case solves the impact—a) 1st Trivigno 13 card says owning guns makes us more racist because we perceive others as having guns too and that makes us more scared and less compassionate b) 3rd Trivigno 13 card says gun ownership allows the criminalization of the black body since the self-defense justification spills over to other bodies—handgun possession reinforces notions of criminals as subhuman—that means we solve the root cause of the k and means no link

#### 3] Turn—status quo gun policies allow the privileged easy access guns but are disproportionately applied against blacks—that’s their Gourevitch ev—a categorical ban i.e. one not based on criminal history, which profiling means blacks are more likely to have, closes this power imbalance

#### 4] Turn—status quo gun policies empower racial profiling by creating a class of “dangerous people” that police are to look out for who cannot have guns – that justifies a paradigm of selective enforcement that *causes their disad* – aff is a shift away

Bovy ’15 (Bovy, Phoebe Maltz, “It’s Time to Ban Guns. Yes, All of Them,” The New Republic, December 10, 2015//FT)

Progressives who might have been able to brush off accusations of anti-rural-white classism may have a tougher time confronting arguments about the disparate impact gun control policies can have on marginalized communities. These, however, are criticisms of certain tentative, insufficient gun control measures—the ones that would leave small-town white families with legally-acquired guns well enough alone, allowing them to shoot themselves or one another and to let their guns enter the general population. Ban Guns, meanwhile, is not discriminatory in this way. It’s not about dividing society into ‘good’ and ‘bad’ gun owners. It’s about placing gun ownership itself in the ‘bad’ category. It’s worth adding that the anti-gun position is ultimately about police not carrying guns, either. That could never happen, right? Well, certainly not if we keep on insisting on its impossibility. Ask yourself this: Is the pro-gun side concerned with how it comes across? More to the point: Does the fact that someone opposes gun control demonstrate that they’re culturally sensitive to the concerns of small-town whites, as well as deeply committed to fighting police brutality against blacks nationwide? I’m going to go with no and no on these. (The NRA exists!) On the pro-gun-control side of things, there’s far too much timidity. What’s needed to stop all gun violence is a vocal ban guns contingent. Getting bogged down in discussions of what’s feasible keeps what needs to happen—no more guns—from entering the realm of possibility. Public opinion needs to shift. The no-guns stance needs to be an identifiable place on the spectrum, embraced unapologetically, if it’s to be reckoned with.

#### 5] Turn—gun possession is the excuse for police shootings—reducing handgun use empirically reduces police shootings

Stockman ’15 (Farah, a writer for the Globe’s editorial board and writes a weekly bylined column. She graduated Magna Cum Laude from Harvard College and lived in Kenya and Tanzania, writing as a freelancer for the New York Times, National Public Radio and the Christian Science Monitor. She served as the Globe’s chief foreign policy reporter in Washington, D.C., for seven years. Stockman has won numerous awards, including the Scripps Howard Foundation national journalism award, “My friend is dead. Why isn’t gun control part of the Black Lives Matter platform?” *Boston Globe*, yay MA pride!, 9/16/15) PO

But it feels like they’re ignoring the obvious: If there were fewer guns on the street, there would be fewer shootings, including by police. Campaign Zero’s impressive website contains a graph that compares the number of people killed by police in the United States (1,100 in 2014) to the number killed in Germany (six), Australia (six), Britain (two), and Japan (none.) / It fails to mention that the big difference between the United States and those countries is not body cameras, or police training, but gun laws, plain and simple. / Gun laws in Germany are considered some of the strictest in Europe. Private possession of handguns or pistols is permitted only with special authorization. After a horrific massacre, [Australia](http://www.gunpolicy.org/firearms/region/australia) instituted sweeping new restrictions, including prohibitions on carrying firearms in public without “a genuine reason.” (Personal protection is not considered a “genuine reason.”) / There are reportedly only[77 handguns](http://www.theatlantic.com/international/archive/2012/07/a-land-without-guns-how-japan-has-virtually-eliminated-shooting-deaths/260189/)in civilian possession in the entire nation of Japan. / And in London, police officers don’t even carry guns, because the likelihood that they will need one is almost nil. / The idea that we can compare ourselves to places like that — and be more like them, with just a tweak here or there in our police training — is a fallacy. Can we improve the situation? Sure. But can we end police shootings altogether without addressing underlying issues of gun violence in this country? I don’t think so. / Black Lives Matter activist Deray McKesson, who is involved in Campaign Zero, sees racism as the main underlying issue. “Their primary excuse/justification [for the shootings] is an expansive ‘fear’ of black skin,” he tweeted when I asked him about it. To be sure, racism plays a role. But plenty of white people are getting shot by cops, as data on the Campaign Zero website reveals. / And a racist police officer who isn’t carrying a gun (like those in Britian) and officers who can’t claim that they thought you were carrying a gun (like those in most of the rest of the world) don’t pull the same kind of shenanigans that we’ve seen here in the United States. / The fact that so many people have guns — and use them against police officers — is the main reason (or excuse) that police officers give to explain why they took a life. It’s a reason that so few are punished for doing so. / There are, of course, good reasons to avoid the gun control debate. If you think gun control is impossible, why waste time on it? / But that’s not why Campaign Zero opted not to include it in the platform. Instead, the campaign claims that gun control “contributes to police violence in many cases.” / “At least 30 people were killed in 2014 after police engaged them for possessing an illegal firearm. Forty-percent of these people were black,” the website states. “More research needs to be done to determine whether gun restrictions (i.e., criminalizing guns and those who carry illegal guns) will reduce or increase police killings — particularly of black people.” / That’s missing the forest because of the trees. / The climate of fear — both real and imagined — created by our concealed-weapon culture takes its toll on black people far beyond the realm of policing. According to the Centers for Disease Control and Prevention, 11,208 people died in firearm-related homicides in 2013. Of them, 6,442 were black. Two-hundred-eighty-one people died from stray bullets or accidental discharges that year. Forty-three of them were black. / For every life cut short by a stray bullet, there are countless lives that are circumscribed in immeasurable ways: kids who aren’t allowed to play outdoors; mothers who give up jobs on streets they deem risky; students who drop out of school rather than run the gantlet of guns. / Although homicides have actually fallen from their peak in 1993, gun violence still takes an enormous toll on America — black America, in particular. Nobody suffers more than black people, who are twice as likely to die from gunfire as whites. (It used to be three times as likely, so there is some progress.) / But this is still perhaps the greatest disparity of all in America: Some kids grow up in fear — not just of the police, but of stray bullets — while other kids grow up with the luxury of never having to worry about getting shot. / That’s why 78 percent of blacks support tougher gun laws, compared to less than half of whites.

#### That means the K misses the point – violence is not just white on black violence but the influx of guns into urban cities that have created a culture of fear and disproportionally affects blacks—that means the case outweighs and they have no terminal uniqueness

#### 6] Non-unique—way too many racist laws now—police will find a way to sustain mass incarceration regardless

McCray ’15 (Rebecca McCray, “Why Gun Control Isn’t at the Heart of the Black Lives Matter Movement,” Takepart, Sep 23 2015//FT)

Without that, Haviland-Eduah and Sinyangwe fear, black communities will unfairly bear the brunt of stricter gun laws. The idea wasn’t created in a vacuum: Going back well over a century, vagrancy and anti-loitering laws were selectively enforced against blacks, and more recently, police practices such as stop-and-frisk, in which an officer stops and pats down a pedestrian suspected of possessing contraband such as a firearm, have been shown to be highly racialized. Though ostensibly aimed at getting guns off the streets, guns were found in only 0.1 percent of 532,000 stop-and-frisk stops made in New York City in 2012, according to the New York Civil Liberties Union. Ninety percent of those stopped were black or Latino, even though whites were more likely to be found packing heat, according to research by Jeffrey Fagan at Columbia University Law School.

#### 7] The root cause of a systematic climate of fear in black communities is widespread gun ownership

Yglesias ’14 [Matthew Yglesias, "We shouldn't talk about Ferguson without talking about guns”, Vox, November 26, 2014]

In this case, the drawback is a straightforward consequence of America's approach to firearms. A well-armed citizenry required an even-better-armed constabulary. Widespread gun ownership creates a systematic climate of fear on the part of the police. The result is a quantity of police shootings that, regardless of the facts of any particular case, is just staggeringly high. Young black men, in particular, are paying the price for America's gun culture. Police killings in international context I've seen [this chart from the Economist](http://www.economist.com/news/united-states/21613272-police-missouri-suburb-demonstrate-how-not-quell-riot-overkill) many times since Brown's death. But I think it's been misinterpreted. Ferguson is in many ways all [about race and racism](http://www.vox.com/2014/11/25/7283327/michael-brown-racist-stereotypes). But this chart reveals an important sense in which it's not about that at all. If you know anything about the UK or Germany, you'll know that these are not even remotely societies who've eliminated the problem of racism. If anything, having struggled with it for less time than the United States, they're even worse than we are. Where they outperform us is in drastically reducing the civilian death toll without ending racism or entrenched poverty or any of the St. Louis area's other problems. A well-armed population leads to police shootings of the unarmed in two ways. One is that police officers have to be constantly vigilant about the possibility that they are facing a gun-wielding suspect. Cleveland police officers [shot and killed a 12 year-old boy](http://www.vox.com/2014/11/24/7275297/tamir-rice-police-shooting)recently, because they not-entirely-unreasonably thought his toy gun was a real gun. The other, more relevant to the Michael Brown case, is that when civilians are well-armed, police have to be as well. That turns every encounter into a potentially lethal situation. The officer always has to worry that if he doesn't reach for and use his own gun, the suspect will. In his [grand jury testimony](http://www.vox.com/2014/11/25/7281165/darren-wilsons-story-side), Wilson pointedly claims that at one point Brown put his right hand "under his shirt into his waistband" — i.e., made a motion that could be plausibly construed as reaching for a gun. No guns, no shootings The big reason British cops don't shoot civilians is that cops in the United Kingdom don't have guns. If a special situation requiring firearms arises, the call is put out for a [specially trained firearms unit](http://www.pfoa.co.uk/326/uk-firearms-units). But an unarmed teenager shoplifting blunts doesn't make the cut, so unarmed teens don't get shot by British cops. It was genuinely striking as an American to witness the heavy police presence in Cardiff this September around the NATO summit. The relatively small city was positively flooded with cops. Unarmed cops. Cops who walked around town chatting with locals and keeping an eye on things. Armed police are such a curiosity that I heard some middle-aged Welsh ladies asking an officer if any armed units were in town to gawk at (they were, but the officer professed not to know their whereabouts). Radley Balko's excellent book, [The Rise of the Warrior Cop](http://www.amazon.com/Rise-Warrior-Cop-Militarization-Americas/dp/1610394577), offers plenty of examples of overly militarized policing. But American cops don't carry weapons because they're bloodthirsty or insane. The basic reason American police departments are so much better-armed than their British counterparts is that Americans civilians are much better armed. There is about [one gun per person](http://www.vox.com/cards/gun-violence-facts/guns-per-capita-america-us) in the United States, and the police legitimately need to be able to wield more force than the citizens they are policing. In America there are lots of guns, so the cops need lots of guns. Consequently, people get shot.

#### The proliferation of guns has flooded inner city communities that creates an every-day war on blacks --- empowerment is impossible when even *survival* is in question

Firmin DeBrabander 15 [associate professor of philosophy at Maryland Institute College of Art, has written social and political commentary for numerous publications, including the Baltimore Sun, Common Dreams, Counterpunch, and the New York Times] “Do Guns Make Us Free?: Democracy and the Armed Society”, Yale University Press, 19 May 2015, FT

But this is far from the real thing. Gruesome Hollywood depictions spark deep, irrational fear of crime, but they do not communicate or reflect its real face, which is readily seen— if we care to look— in our inner cities and countless poor communities across America. While Americans eagerly devour spectacular bloodshed as entertainment— and use that to justify their need for a gun, indeed, many guns— hundreds of people meet an unglorious, unremarked death on the streets of cities like Baltimore every year. The television viewing public does not come to know the mean conditions of their demise, the quick, blunt ends of desperate lives. The fates of Baltimore’s murdered poor are hardly celebrated or studied by the media, and are instead belittled or swept under the rug by police and politicians. Suburbanites commute to work every day amidst the violence that afflicts Baltimore’s most desperate neighborhoods on either side of the highway; they flock to football and baseball games downtown, oblivious to the misery that rules the city’s roughest streets and how they are so surely insulated from it. For poor blacks— who are disproportionately affected by violent crime— the America they know can be a veritable war zone. According to a Bureau of Justice Statistics report, between the years 1976 and 2005, the homicide rate for white Americans was 4.8 per 100,000, but an astounding 36.9 [per 100,000] for blacks. 80 The United States Conference of Mayors, one of the loudest voices calling for gun control, noted in 2012 that “homicide is the leading cause of death for African American males between the ages of 15 and 24.” African Americans comprise just 15 percent of the nation’s child population, but “made up 45 percent of child gun deaths in 2008 and 2009,” the Children’s Defense Fund reports. 82 Many of our nation’s mayors, as well as many African Americans, complained following the Sandy Hook shootings, when the American public seemed newly aware of gun violence, that the constant flood of gun deaths in our inner cities is neglected and ignored. The Washington Post ran an article on residents of the most dangerous neighborhood in the District, noting their frustration that the killings “in mostly white, middle class Newtown, Connecticut” spurred political concern. “Twenty-six people died in Sandy Hook Elementary. In the District’s Sixth Police District, an area of fewer than 10 square miles … 19 lives were lost to gun violence last year and 55 people were wounded in shootings. The year before that, 22 people were killed and 35 were wounded. Eighty-eight lives were lost in the city last year.” 83 A quarter of Washington’s murders took place in one small part of the city, a neighborhood subjected to a merciless onslaught of violence. It is no surprise that inner-city residents tend to find the notion of “gun rights” a bit offensive. Of the homicide epidemic that afflicts the African American community at large, the Centers for Disease Control points out, “more than 90 percent of the violence is from other blacks, mostly from guns.” 84 As one Washington resident put it, “[guns] are for wars, and we have a war in the inner city.” 85 It is hardly conceivable that the rest of America would tolerate all the talk equating gun rights and freedom if middle-class whites were killing one another at similar rates.

#### Plan solves a major avenue for the infliction of white racial terror upon black communities, and gun violence locks in cycles of racist oppression

Peniel ’15 (Joseph Peniel, Reporter for Newsweek, "Guns Have Been the Most Dramatic Weapon Used Against African-Americans, but Not the Most Effective," Newsweek, 6/23, <http://www.newsweek.com/guns-have-been-most-dramatic-weapon-used-against-african-> americans-not-most-346101)

African-American veterans returned from World War I with a renewed militancy that helped ignite a New Negro Movement that promoted black political self-determination. New Negroes flocked to Marcus Garvey’s Universal Negro Improvement Association, creating businesses, publishing newspapers and preaching a gospel of racial unity whose cultural arm would flower in the Harlem Renaissance. But whites’ anti-black violence, often backed by guns, was never far away. Racial segregation in public accommodations and the disenfranchisement of black voters was backed by both public policy and popular consensus. Just as guns, many of them—including those wielded by black soldiers—helped to end slavery and win the Civil War, it would take thousands of guns—this time wielded by white supremacists—to enable white Southerners to win the peace. The modern civil rights era unfolded against this backdrop, where whites used guns and threats of violent reprisals to ensure a brutally unjust racial order. The movement’s nonviolent face, personified by Dr. Martin Luther King Jr.’s dream of a “beloved community,” hid a long history of armed self-determination within the black community. Malcolm X’s scathing broadsides against white violence included open advocacy for armed self-defense so that blacks could achieve liberation “by any means necessary,” as he often said in speeches during the early 1960s. While most African-Americans avoided taking up arms, some did, including Robert F. Williams, a North Carolina NAACP activist and author of Negroes With Guns (1962); the Deacons for Defense and Justice; and the Black Panthers. Both Williams and the Deacons offered armed protection against racist terror for nonviolent civil rights activists in the South. Members of the Student Non-Violent Coordinating Committee (or SNCC, pronounced “snick) encountered an older generation of Southern blacks who never left their rural homes without carrying a pistol or shotgun for protection. The Black Panthers for a time went further, shifting from a self-defensive posture into an open advocacy of “revolutionary violence” before being pummeled into submission by the FBI and local authorities through state-sanctioned violence. Yet the symbolism of black men and women confronting police brutality and racial violence armed with guns and law books resonates today. Post-civil-rights America has seen an explosion of guns and gun violence that has disproportionately hurt the African-American community. The flood of guns in racially segregated and impoverished black neighborhoods has produced catastrophic trauma in inner cities. Black homicide rates dwarf their white counterparts, with most victims killed by African-Americans, the pro-gun control Violence Policy Center [reports](http://www.vpc.org/studies/blackhomicide14.pdf). Yet too often the easy access to guns, coupled with the racial segregation, high unemployment, failing schools and mass incarceration that leads to such carnage, is ignored by politicians in favor of a facile condemnation of “black-on-black crime” (in contrast to white-on-white crime, which is rarely spoken of) and the decline of the black family. The black community’s relationship with guns remains fraught and ambivalent, with one-third of African-Americans owning guns, compared with just over half of whites. Blacks favor stricter gun control laws, perhaps due to a deeper understanding that “stand your ground” laws have, as in the George Zimmerman case, made it more likely for white-on-black homicides to be considered justified. The brutal deaths in Charleston are part of long history of American violence against black communities. Guns have been the most dramatic weapon used against blacks but perhaps not the most effective. The deeper violence has been in the generational neglect, demonization and stigma that American society has attached to blackness nationally. One hundred and fifty years after [Juneteenth](http://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/what-is-juneteenth/) delivered the good news of freedom to blacks on the outskirts of Texas, too many African-Americans reside in another country: a world marked by poverty, racial segregation, poor schools and easy access to guns. The racial impact of America’s gun culture affects the black community on multiple levels, often unforgivingly. State-sanctioned violence, as practiced by law enforcement, targets blacks with a vengeance for crimes both real and imagined, as we have witnessed in meticulous detail since Ferguson. Armed vigilantes have also played a role, from the racial terror of the Klan to the shooting in Charleston. Perhaps most depressing is the black gun violence by young people who have been abandoned by mainstream society to join gangs, engage in turf wars and debase themselves through acts of killing that further dehumanize their very existence. The hard truth about race, gun violence and divisions in America is that the very acts of racial violence being decried in Charleston are connected to a long and continuous history of racial and economic oppression. It’s one rooted in an intimate relationship—between racial slavery and capitalism, Jim Crow and the criminal justice system, and racial terror and white power—that has always been backed by guns.

### AT: ROB

#### 1] We meet—that’s the turns

#### 2] The counter-role of the ballot is to fairly determine whether private ownership of handguns ought to be banned in the United States

#### a] Ground—includes all the ground under your role of the ballot and allows other ethical frameworks—means more diverse debates—also key to fairness which is the internal link to a good discussion of oppression

#### b] Framework debate good—1] Lets us understand why oppression is bad, which in turn enables us to justify that to others—turns your ROB 2] Tells us *how* we should act knowing oppression is bad—i.e. can we enslave one to stop the enslavement of 5? 3] Allows us to weigh oppression impacts—is dehumanization worse than shootings? Only FW can resolve that

#### c] Topical debate DA—you allow un-T affs that kill productive discussion and topical education—XA that key to your ROB

### AT: Abstraction

#### Not the aff—

#### 1] The *whole point* of the FW is that we can’t have traditional deductive ethical claims like Kant—it’s not trying to derive ethics from some abstract notion of reason

#### 2] Takes into account the real world—Reader 2k talks about how we *learn* about morals from observing the world around us and how virtues enable that—not abstract

### AT: Self-Protection

#### 1) Handguns don’t solve—you can’t overthrow a state with *aircraft carriers* using *handguns*

#### 2) Turn: causes backlash—resisting with guns gives police *more* excuse to go into oppressed communities—outweighs since they’re more likely to use deadly violence if they have a legal excuse

#### 3) Turn: causes criminalization—people will associate gun violence even more with minorities—perpetuates racism

#### 4) Non-unique—background checks in the squo means state can take guns from so-called criminals

### --- Gadamer

#### To understand requires internal critique of assumptions, but for us to even understand the critique requires that it start within the framework of our original for-meanings. Thus critique and development of the aff is important, but it must start within the affs general methodology, otherwise no engagement or development is possible.

Gadamer ’60 (Hans-Georg Gadamer. Truth and Method. 1960. [modified for gendered language) bracketed for gender

What Heidegger is working out here is not primarily a prescription for the practice of understanding, but a description of the way interpretive understanding is achieved. The point of Heidegger's hermeneutical reflection is not so much to prove that there is a circle, as to show that this circle possesses an ontologically positive significance. The description as such will be obvious to every interpreter who knows what he is about.3 All correct interpretation must be on guard against arbitrary fancies and the limitations imposed by imperceptible habits of thought, and it must direct its gaze "on the things themselves" (which, in the case of the literary critic, are meaningful texts, which themselves are again concerned with objects). For the interpreter to let himself be guided by the things themselves is obviously not a matter of a single, "conscientious" decision, but is "the first, last, and constant task." For it is necessary to keep one's gaze fixed on the thing throughout all the constant distractions that originate in the interpreter himself. A person who is trying to understand a text is always projecting. [They] project a meaning for the text as a whole as soon as some initial meaning emerges in the text. Again, the initial meaning emerges only because [they are] reading the text with particular expectations in regard to a certain meaning. Working out this fore-projection, which is constantly revised in terms of what emerges as he penetrates into the meaning, is understanding what is there. This description is, of course, a rough abbreviation of the whole. The process that Heidegger describes is that every revision of the fore projection is capable of projecting before itself a new projection of meaning; rival projects can emerge side by side until it becomes clearer what the unity of meaning is; interpretation begins with fore-conceptions that are replaced by more suitable ones. This constant process of new projection constitutes the movement of understanding and interpretation. A person who is trying to understand is exposed to distraction from fore meanings that are not borne out by the things themselves. Working out appropriate projections, anticipatory in nature, to be confirmed "by the things" themselves, is the constant task of understanding. The only "objectivity" here is the confirmation of a fore-meaning in its being worked out. Indeed, what characterizes the arbitrariness of inappropriate fore meanings if not that they come to nothing in being worked out? But understanding realizes **its** full potential only when the fore-meanings that it begins with are not arbitrary. Thus it is quite right for the interpreter not to approach the text directly, relying solely on the fore-meaning already available to him, but rather explicitly to examine the legitimacy—i.e., the origin and validity—of the fore-meanings dwelling within him. This basic requirement must be seen as the radicalization of a procedure that we in fact exercise whenever we understand anything. Every text presents the task of not simply leaving our own linguistic usage unexamined—or in the case of a foreign language the usage that we are familiar with from writers or from daily intercourse. Rather, we regard our task as deriving our understanding of the text from the linguistic usage of the time or of the author. The question is, of course, how this general requirement can be fulfilled. Especially in the field of semantics we are confronted with the problem that our own use of language is unconscious. How do we discover that there is a difference between our own customary usage and that of the text? I think we must say that generally we do so in the experience of being pulled up short by the text. Either it does not yield any meaning at all or its meaning is not compatible with what we had expected. This is what brings us up short and alerts us to a possible difference in usage. Someone who speaks the same language as I do uses the words in the sense familiar to me—this is a general presupposition that can be questioned only in particular cases. The same thing is true in the case of a foreign language: we all think we have a standard knowledge of it and assume this standard usage when we are reading a text. What is true of fore-meanings that stem from usage, however, is equally true of the fore-meanings concerning content with which we read texts, and which make up our fore-understanding. Here too we may ask how we can break the spell of our own fore-meanings. There can, of course, be a general expectation that what the text says will fit perfectly with my own meanings and expectations. But what another person tells me, whether in conversation, letter, book, or whatever, is generally supposed to be his own and not my opinion; and this is what I am to take note of without necessarily having to share it. Yet this presupposition is not something that makes understanding easier, but harder, since the fore-meanings that determine my own understanding can go entirely unnoticed. If they give rise to misunderstandings, how can our misunderstandings of a text be perceived at all if there is nothing to contradict them? How can a text be protected against misunderstanding from the start? If we examine the situation more closely, however, we find that meanings cannot be understood in an arbitrary way. Just as we cannot continually misunderstand the use of a word without its affecting the meaning of the whole, so we cannot stick ~~blindly~~ to our own fore-meaning about the thing if we want to understand the meaning of another. **Of course** this does not mean that when we listen to someone or read a book we must forget all our fore-meanings concerning the content and all our own ideas. All that is asked is that we remain open to the meaning of the other person or text. But this openness always includes our situating the other meaning in relation to the whole of our own meanings or ourselves in relation to it. Now, the fact is that meanings represent a fluid multiplicity of possibilities (in comparison to the agreement presented by a language and a vocabulary), but within this multiplicity of what can be thought—i.e., of what a reader can find meaningful and hence expect to find—not everything is possible; and if a person fails to hear what the other person is really saying, he will not be able to fit what he has misunderstood into the range of his own various expectations of meaning. Thus there is a criterion here also. The hermeneutical task becomes of itself a questioning of things and is always in part so defined. This places hermeneutical work on a firm basis. A person trying To understand something will not resign himself from the start to relying on his own accidental fore-meanings, ignoring as consistently and stubbornly as possible the actual meaning of the text until the latter becomes so persistently audible that it breaks through what the interpreter imagines it to be. Rather, **a person trying to understand** a text is prepared for it to tell him something. That is why a hermeneutically trained consciousness **must be,** from the start, **sensitive to** the text's **alterity**. **But this kind of sensitivity involves neither "neutrality" with respect to content nor the extinction of one's self, but the foregrounding and appropriation of one's own fore-meanings and prejudices.** The important thing is to be aware of one's own bias, so that the text can present itself in all its otherness and thus assert its own truth against one's own fore-meanings.

### --- Root Cause

#### The root cause of a systematic climate of fear in black communities is widespread gun ownership

Yglesias ’14 [Matthew Yglesias, "We shouldn't talk about Ferguson without talking about guns”, Vox, November 26, 2014]

In this case, the drawback is a straightforward consequence of America's approach to firearms. A well-armed citizenry required an even-better-armed constabulary. Widespread gun ownership creates a systematic climate of fear on the part of the police. The result is a quantity of police shootings that, regardless of the facts of any particular case, is just staggeringly high. Young black men, in particular, are paying the price for America's gun culture. Police killings in international context I've seen [this chart from the Economist](http://www.economist.com/news/united-states/21613272-police-missouri-suburb-demonstrate-how-not-quell-riot-overkill) many times since Brown's death. But I think it's been misinterpreted. Ferguson is in many ways all [about race and racism](http://www.vox.com/2014/11/25/7283327/michael-brown-racist-stereotypes). But this chart reveals an important sense in which it's not about that at all. If you know anything about the UK or Germany, you'll know that these are not even remotely societies who've eliminated the problem of racism. If anything, having struggled with it for less time than the United States, they're even worse than we are. Where they outperform us is in drastically reducing the civilian death toll without ending racism or entrenched poverty or any of the St. Louis area's other problems. A well-armed population leads to police shootings of the unarmed in two ways. One is that police officers have to be constantly vigilant about the possibility that they are facing a gun-wielding suspect. Cleveland police officers [shot and killed a 12 year-old boy](http://www.vox.com/2014/11/24/7275297/tamir-rice-police-shooting)recently, because they not-entirely-unreasonably thought his toy gun was a real gun. The other, more relevant to the Michael Brown case, is that when civilians are well-armed, police have to be as well. That turns every encounter into a potentially lethal situation. The officer always has to worry that if he doesn't reach for and use his own gun, the suspect will. In his [grand jury testimony](http://www.vox.com/2014/11/25/7281165/darren-wilsons-story-side), Wilson pointedly claims that at one point Brown put his right hand "under his shirt into his waistband" — i.e., made a motion that could be plausibly construed as reaching for a gun. No guns, no shootings The big reason British cops don't shoot civilians is that cops in the United Kingdom don't have guns. If a special situation requiring firearms arises, the call is put out for a [specially trained firearms unit](http://www.pfoa.co.uk/326/uk-firearms-units). But an unarmed teenager shoplifting blunts doesn't make the cut, so unarmed teens don't get shot by British cops. It was genuinely striking as an American to witness the heavy police presence in Cardiff this September around the NATO summit. The relatively small city was positively flooded with cops. Unarmed cops. Cops who walked around town chatting with locals and keeping an eye on things. Armed police are such a curiosity that I heard some middle-aged Welsh ladies asking an officer if any armed units were in town to gawk at (they were, but the officer professed not to know their whereabouts). Radley Balko's excellent book, [The Rise of the Warrior Cop](http://www.amazon.com/Rise-Warrior-Cop-Militarization-Americas/dp/1610394577), offers plenty of examples of overly militarized policing. But American cops don't carry weapons because they're bloodthirsty or insane. The basic reason American police departments are so much better-armed than their British counterparts is that Americans civilians are much better armed. There is about [one gun per person](http://www.vox.com/cards/gun-violence-facts/guns-per-capita-america-us) in the United States, and the police legitimately need to be able to wield more force than the citizens they are policing. In America there are lots of guns, so the cops need lots of guns. Consequently, people get shot.

#### If racial profiling occurs, only gun bans solve the impact – takes away the tools to inflict violence against black America.

Yglesias ’14 [Matthew Yglesias, "We shouldn't talk about Ferguson without talking about guns”, Vox, November 26, 2014]

Freedom isn't free, and a somewhat higher rate of police-involved killings could simply be the price we pay for strong gun rights. It's the interaction with race, however, that makes this so problematic. The cost of American gun ownership isn't borne evenly across the country. Black people — specifically young black men — are suffering disproportionately from both [gun homicide](http://www.vox.com/cards/gun-violence-facts/guns-international-comparison-us-homicide) (which, yes, is [more common](http://www.vox.com/cards/gun-violence-facts/gun-homicide-effect-increase) where guns are widespread — it's true that a large share of crime guns are already illegal, but the [legal circulation of large quantities of small weapons](http://www.samefacts.com/2012/12/everything-else/take-home-lessons-from-sandy-hook/#comments) makes it much easier to obtain one illegally) and police shootings. To be clear about something, since it seems very important to a lot of people who email and tweet at me, this is not some kind of crazy cosmic coincidence. It is genuinely true that men murder at a higher rate than women, that young people murder at a higher rate than old ones, and that black people murder at a higher rate than white ones. That a pall of suspicion falls on young black men is, in part, a statistical inference. But this statistical inference gets young black men killed for encounters with the police that would lead to a reprimand or a citation for a white one. And that's a national scandal. It is a form of wholly unjustified collective punishment inflicted on an African-American community that, just like the white community, consists overwhelmingly of non-murderers. A legacy of bias And of course there's much more going on than simple statistical inference. Study after study shows widespread low-level bias against African-Americans. Medical doctors are less likely to give [black patients adequate pain medication](http://articles.chicagotribune.com/2013-07-05/lifestyle/sns-rt-us-minorities-painkiller-20130705_1_opioids-black-patients-pain). Participants in shooting simulations are less likely to [correctly identify black civilians](http://onlinelibrary.wiley.com/doi/10.1111/spc3.12099/abstract). Black children are[perceived as older](http://www.apa.org/news/press/releases/2014/03/black-boys-older.aspx) than they really are. White people are likely to [attribute superhuman powers to black people](http://www.vox.com/2014/11/25/7283327/michael-brown-racist-stereotypes). Law student memos are [judged more harshly](http://www.vox.com/2014/4/21/5637068/reviewers-will-find-more-spelling-errors-in-your-writing-if-they)when the reader believes the author was black. This is all done not by Ku Klux Klan members, but by random samples of the population. Very normal people who would loudly insist, if asked, that they are not racist and whose friends — the white ones at least — would surely stick up for them. And that's what makes it so problematic. A police force filled with perfectly average, normal, everyday Americans is going to deal systematically [more harshly with black suspects](http://www.vox.com/2014/8/28/6051971/police-implicit-bias-michael-brown-ferguson-missouri). America's culture of widespread gun ownership and strong gun rights is devastating to black America. African-Americans suffer disproportionately from gun crime, and then suffer all over again from disproportionate police killings. It's no coincidence that if public policy were made by black Americans or their elected representatives, [gun ownership rules would be radically different](http://thehill.com/blogs/blog-briefing-room/news/309881-cbc-asks-obama-to-target-help-for-communities-in-need). But it isn't. Policy is made by mostly white elected officials responding to a mostly white electorate, in which gun rights enthusiasts are the people who care most about the issue. Among the general public and the political mainstream, gun regulation tends to arise in the context of mass shootings. These rare events are politically convenient due to their high salience and the thought that small changes to the rules could cut down on these outlier events. But mass shootings are a [tiny fraction of all gun homicides in America](http://www.vox.com/cards/gun-violence-facts/mass-shootings-rare-united-states). Small, [narrowly tailored legislation](http://www.washingtonpost.com/blogs/wonkblog/wp/2012/12/18/a-better-target-for-gun-control/) to address them would do little about the big problems in American crime control policy and nothing at all about the plague of systematically biased police shootings. But there's no political support in America for drastic disarming of the civilian population. People like owning guns, there's a deep cultural tradition of gun ownership, violent crime is not a big problem for most people, and [murder rates are falling](http://www.vox.com/cards/gun-violence-facts/gun-homicide-decline-crime-drop). That's another way of saying the white majority and its children don't need to worry much about this problem. But the fact that heavily armed cops are disproportionately likely to kill young black men is a national scandal. Gun ownership is the huge, obvious difference between the United States and countries with drastically lower rates of police killing and nobody is talking about it. That's very unlikely to change any time soon. But it ought to.

### AT Stop and Frisk

#### **No prison impact – stop and frisk doesn’t lead to conviction, and lawsuits against the NYPD are solving**

Gabbatt 13

Adam, the Guardian, Stop-and-frisk: only 3% of 2.4m stops result in conviction, report finds, http://www.theguardian.com/world/2013/nov/14/stop-and-frisk-new-york-conviction-rate

**New York’s controversial stop-and-frisk policy**, hailed by the city’s mayor and police chief as crucial in fighting crime, **could boast only a 3% conviction rate** between 2009 and 2012, according to a report by the state attorney general released on Thursday. The report by Eric Schneiderman, the first detailed examination of the policy’s arrest and conviction rate, used data from the New York Police Department and the Office of Court Administration to examine approximately 2.4m stops over the three-year period. Those stops resulted in almost 150,000 arrests, but only half of those led to a conviction or a guilty plea. Opponents of the policy, which is viewed by civil rights activists as unfairly targeting African-Americans and Hispanics, seized on the report. But the NYPD attacked it in strong terms, saying that it was meaningless because it did not make a comparison with the outcomes of arrests not carried out under the stop-and-frisk policy. The NYPD practice, known fully as "stop, question and frisk", was ruled unconstitutional earlier this year. The administration of outgoing mayor Michael Bloomberg is appealing against the ruling, although the future of the litigation is in doubt as the newly elected mayor, Bill de Blasio, is an opponent of the policy and has pledged to replace the police chief, Ray Kelly. **Schneiderman's study found that 0.3% of the** 2.4m **stops led to jail sentences of more than 30 days**, and 0.1% led to convictions for violent crime. It also found that **there had been a “sharp uptick” in litigation costs for the city due to** the cost of **defending the NYPD from lawsuits**.

#### Stop and frisks decreasing now

Parascandola 14

BY ROCCO PARASCANDOLA, JENNA O’DONNELL, LARRY MCSHANE NEW YORK DAILY NEWS Saturday, August 16, 2014, 2:30 AM http://www.nydailynews.com/new-york/nyc-crime/nypd-stop-and-frisks-drop-99-percent-shootings-increase-brooklyn-article-1.1905456

**Cops in two of the city’s toughest precincts recorded 99% fewer stop-and-frisks** during the first half of the year — part of **a staggering decline in the polarizing police tactic** from the same period just three years ago. Officers assigned to the 75th Precinct in East New York and the 73rd Precinct in Brownsville stopped just 126 people in the first half of 2014, compared to 10,540 stops between January and June of 2011. The nearly eye-popping decrease is no misprint — and it comes as shootings in those neighborhoods are on the rise.

#### Stop and frisk is illegal now

Cassidy 13

AUGUST 13, 2013 The Statistical Debate Behind the Stop-and-Frisk Verdict BY JOHN CASSIDY, http://www.newyorker.com/news/john-cassidy/the-statistical-debate-behind-the-stop-and-frisk-verdict

As all the world now knows, **Judge** Shira **Scheindlin** has **ruled** that the New York City Police Department’s **stop-and-frisk** policy amounts to “a policy of indirect **racial profiling” that violates the U.S. Constitution.** But how did the she reach this conclusion? The answer turns out to be pretty interesting. It involves a number of statistical studies presented to the court by expert witnesses for the plaintiffs (a number of New Yorkers who claimed to have been stopped and frisked without cause) and the defense (the city of New York).

### Aff Solves Violence Against Blacks

#### Aff solves violence against blacks and handguns are key

Everitt 10

Ladd Everitt September 16, 2010 Debunking the ‘gun control is racist’ smear http://wagingnonviolence.org/feature/debunking-the-gun-control-is-racist-smear/

There’s a good reason why **few African-Americans** associate guns with “freedom” and “liberty.” **The national U.S. homicide rate is 5.3 per 100,000 people. Among blacks, it’s 20.9 per 100,000. That’s four times the national rate and seven times the white rate.** **In 82% of black-victim homicides** in which **the** fatal **weapon** can be identified, **it’s a gun**. And **73%** of those gun deaths are **inflicted by handguns**.

### Overcrowding

Overcrowding

Horwitz 15

Sari Horwitz, WASHINGTON POST Wednesday, October 7, 2015, 1:08 AM <http://www.philly.com/philly/news/20151007_Justice_Department_about_to_free_6_000_prisoners.html#2ivW8ybd11v9dvPv.99>

WASHINGTON - **The Justice Department is set to release about 6,000 inmates early from prison** - the largest one-time release of federal prisoners - **in an effort to reduce overcrowding and provide relief** **to** drug offenders who received **harsh sentences** over the last three decades, according to U.S. officials.

### Paternalism

#### **The neg is paternalist – black people want gun control, and the DA is just a conservative tactic**

Gordon 13

Gun Control Debate Amongst African-Americans Involves Complicated History The Huffington Post | By Claire Gordon Email Posted: 03/18/2013 9:45 am EDT

In recent weeks, the country's gun debate has taken a racial turn. **The latest ad from the N**ational **R**ifle **A**ssociation urges people not to trust the government to protect them, with **references** to **segregation and the KKK**. In January, controversial rock star Ted Nugent compared gun owners to Rosa Parks. Recently, **conservative political activist** Star Parker **released** her own **ad equating gun control with Jim Crow**, while the president of the NRA argued that the origins of gun control were racist. **It's** a **striking** trend, particularly **since** the **black leadership has traditionally led the charge for gun control. The National Urban League is a member of The Coalition to Stop Gun Violence, and few organizations have put as much legal muscle behind the** gun control **fight as the NAACP. African-Americans are also less than half as likely as whites to own a gun, and they're far more likely to prioritize gun control over gun rights**.

### AT History

#### Your logic implies every law is racist, but that’s not sufficient

Everitt 10

Ladd Everitt September 16, 2010 Debunking the ‘gun control is racist’ smear http://wagingnonviolence.org/feature/debunking-the-gun-control-is-racist-smear/

This is not to say that there were not discriminatory gun control laws at this time—and other times—in our history that specifically targeted blacks. But the fact is that for most of our 234 years, **the entire U.S. legal system has been arrayed against blacks. Using gun rights activists’ weak logic, one could claim that virtually any type of law** **has racist origins: property laws, marriage laws, tort laws, contract laws,** etc., etc. Just because there was once racial inequity in certain, long-abolished laws, however, **does not mean we should abandon all efforts** at government regulation.

# WIP

### More AT: AE

#### Your philosophers suck

Carlin, (JC Anarchy Theory, “Argumentation Ethics Overview,” http://jamescarlin.wikidot.com/critique-of-argumentation-ethics//FT)

Typically all critiques of A.E. are met with accusations that one simply does not understand A.E. From there, one will typically be met with explanations whose length rivals that of a novel, or vague assertions that A.E. theory has already addressed those criticisms. While that explanation might comfort A.E. supporters, it doesn't reflect that fact that many libertarian critics of A.E. are anything but unfamiliar with A.E., and at some point spent countless hours reading, studying, listening, and otherwise absorbing information from various sources including Hoppe, Rand, Kinsella, and Molyneux… as well as various conversations, debates, and other sources.

#### No self-ownership

Murphy and Callahan, (Bob Murphy and Gene Callahan, “Hans-Hermann Hoppe’s Argumentation Ethic: A Critique,” anti-state.com//FT)

**HOPPE’S ARGUMENT FAILS** ON ITS OWN TERMS As stated in the opening, we believe that even if one grants the basic validity of Hoppe’s approach, his argument fails to make the case for full self-ownership. **At best, Hoppe has proven that it would be contradictory to argue that someone does not rightfully own his mouth, ears, eyes, heart, brain, and any other bodily components deemed essential for debate**. But this clearly would not include, say, a person’s legs; after all, it is certainly possible for someone to engage in fruitful debate without having any legs at all. (Consider physicist Stephen Hawking, who is quite physically handicapped and yet manages to engage in propositional discourse of the highest caliber.) To make the point more applicable, we could easily imagine a collectivist arguing, "People should not have full ownership of their bodies, as libertarian theorists believe. **For example, if somebody is sick and needs a kidney, then it is moral to use force to compel a healthy person to give up one of his kidneys." Since it is not necessary to have two kidneys in order to debate, Hoppe’s argument would in no way hinder this collectivist claim.** Thus we have shown that, even on its own terms, the argument only establishes ownership over portions of one’s body. **Now we extend this, and show that at best it only establishes ownership during the course of the debate.** For example, **suppose a collectivist argues,** "Generally speaking, people have the right to use their bodies as they see fit. However, **during national emergencies, it is moral to use force to compel certain individuals to act in the public interest**. In particular, if the nation is being invaded, and voluntary recruitment falls short, the government may draft people into military service. Therefore, the libertarian claim to absolute self-ownership is illegitimate." Now **how does Hoppe’s argument show that someone uttering the above** (**during a** policy **debate**) **is engaging in a performative contradiction? The collectivist is not using force during the debate; he is merely arguing that under certain conditions the use of force is appropriate** to compel military service, **and thus denies the libertarian ethic**. We certainly disagree with this hypothetical collectivist, but **we don’t see how his claims are internally contradictory.**

#### The premises of AE don’t extend past the act of arguing --- during argumentation it may be important not to coerce individuals to ensure the product of argumentation is valid, but the conclusion doesn’t have to respect those same premises.

Murphy and Callahan, (Bob Murphy and Gene Callahan, “Hans-Hermann Hoppe’s Argumentation Ethic: A Critique,” anti-state.com//FT)

Before moving on, let us point out one rejoinder that is not valid for the defender of Hoppe’s argument. In response to arguments like the above, a Hoppeian might be tempted to say, "The fact that such collectivists would not be performing a contradiction at that moment is irrelevant. The beliefs of these collectivists necessarily rest on ‘might makes right’ when force is applied, and at that point, they show that they are not really interested in justifying their aggression. For example," the Hoppeian might continue, "a person forced into a hospital to have a kidney removed certainly can’t argue while he’s under, and a person forced to the front lines to repel invaders certainly isn’t in a fair position to debate the justice of his condition. Therefore, these collectivists are engaging in a contradiction when they try to justify forced kidney transplants or the draft." (On this issue, Hoppe himself has written: "[I]n the same way as the validity of a mathematical proof is not restricted to the moment of proving it, so, then, is the validity of the libertarian property theory not limited to instances of argumentation. If correct, the argument demonstrates its universal justification, arguing or not" [Liberty p. 54].) Again, reasoning such as this is invalid; the defender of Hoppe must come up with a different way to respond to our arguments above. To see why this purported defense fails, consider the proposition, "One should not argue during a funeral." Now, not only do we feel that it is consistent to justify this proposition, but we actually believe it is true. In fact**, if someone were to start arguing during a funeral, we feel it would be completely appropriate for family members to escort the person away** from the somber proceedings. We can imagine this disruptive individual (perhaps versed in the writings of Habermas) claiming that his oppressors were relying on naked aggression, and were uninterested in debating the justice of their use of force. In fact, he **[the person] could quite correctly point out that it would be a performative contradiction for the family members to argue, during the event itself**, "One shouldn’t argue during a funeral." **Nonetheless, would this demonstration prove that force had been unjustly deployed? Of course not. The truth of a proposition can be argued outside of the circumstances in which the proposition must be applied.** So for the funeral, as for the military draft or organ transplant: Just because one can’t argue on the front lines or in an operating room, doesn’t itself prove that these outcomes are unjustified uses of force. **So it is true, as Hoppe points out, that once a proposition has been proven, the proof does not "expire" the moment the discussion of it ceases. But the proof only holds when the premises it assumes also hold.** Hoppe has shown that bashing someone on the head is an illogical form of argumentation. He has not shown that the fact that one has ever argued demonstrates that one may never bash anyone on the head, nor has he demonstrated that one may not argue that it would be a good thing to bash so-and-so on the head. We cannot convince you of anything by clubbing you, but we may quite logically try to convince you that it is OK for us to club you.

#### Arg ethics justifies --- deeming groups as irrational and excluding them

Murphy and Callahan, (Bob Murphy and Gene Callahan, “Hans-Hermann Hoppe’s Argumentation Ethic: A Critique,” anti-state.com//FT)

Finally, we wish to note that, even if the above problems are overlooked, it’s still the case that Hoppe has only proven self-ownership for the individuals in the debate. This is because, even on Hoppe’s own grounds, someone denying the libertarian ethic would only be engaging in contradiction if he tried to justify his preferred doctrine to its "victims." For example, so long as Aristotle only argued with other Greeks about the inferiority of barbarians and their natural status as slaves, then he would not be engaging in a performative contradiction. He could quite consistently grant self-ownership to his Greek debating opponent, while denying it to those whom he deems naturally inferior. Once again, let us point out that the fan of Hoppe must exercise caution. It is tempting to respond to the above example by saying, "That’s silly. If Aristotle tried to justify his views to a barbarian debating opponent, he would necessarily be engaging in contradiction. Therefore, his views are in general unjustifiable." Why is this response illegitimate? Because, if we accept it, then we must also admit that human "domination" of "lower" animals is also unjustifiable. Human beings never ask polar bears their thoughts on zoos. Horses are never allowed to debate the justice of their position in society. But surely the Hoppeian would not consider the denial of self-ownership to these creatures as an unjustifiable practice. Indeed, there are debates all the time on the issue of animal rights, and humans do try to justify experiments on animals, slaughtering animals for food, etc. But when these humans do so, it is always in order to convince other human beings. Nobody – not even animal rights activists – ever demands that we justify our practices to the animals themselves. Of course, the Hoppeian might respond that horses are not as rational as humans, and therefore do not need to be consulted. But Aristotle need only contend the same thing about barbarians: they are not as rational as Greeks. And the only way to prove him wrong would be to argue that barbarians deserved the same rights as Greeks; i.e., one would have to start from scratch in trying to defend natural rights. Hoppe’s argument as such offers nothing to help in this task. To assume from the outset that whatever rights any particular individual enjoys (through argumentation), must therefore extend to all people – including newborn infants, the mentally retarded, as well as senile and comatose individuals, none of whom can successfully debate – is to beg the question. (To simply declare that ownership rights must be "universalizable" is no help, either; after all, communists could cite the same principle to "prove" that everyone should have equal shares to all property. And, of course, what set of living beings ownership rights must be "universalizable" over is precisely what Aristotle or the animal-rights activist wishes to dispute with Hoppe.)

#### It conflates use with ownership

Murphy and Callahan, (Bob Murphy and Gene Callahan, “Hans-Hermann Hoppe’s Argumentation Ethic: A Critique,” anti-state.com//FT)

Second, **imagine that [you]** a Georgist **were to argue that everyone should own a piece of** landed **property**. The Georgist could go so far as to claim that his position is the only justifiable one. He could correctly observe **[claiming] that anyone debating [you]** him **would necessarily grant [you]** the Georgist **some standing room, and thus it would be a performative contradiction to deny that everyone is entitled to a piece of land.** We imagine that **Hoppe would point out** to such a Georgist **that using a piece of land during a debate does not entitle one to its full ownership, and** Hoppe **would be correct. But by the same token, Hoppe’s argument for ownership of one’s body falls apart; Hoppe has committed the exact same fallacy** as our hypothetical Georgist.

#### Infinite regress –

Praxeology, “The Hoppriori Argument,” http://praxeology.net/unblog05-04.htm

Is **[The] premise** (1) [ **[that] No position is rationally defensible unless it can be justified by argument**.] true? Not obviously so. It **depends**, I suppose, **on what counts as an argument**. (Does Aristotelean “negative demonstration” count? Does coherence among propositions count?) But **if argument involves deriving a conclusion from premises, then (1) seems to say that no position is rationally defensible unless it can be derived from premises. But presumably** the **premises themselves must be rationally defensible too; deriving a conclusion from premises that are not rationally defensible is hardly going to confer rational defensibility on the conclusion. So those premises, too, must be justified by argument –** and so on for the premises of that argument. **Thus we are launched on an infinite regress,** with the apparent upshot that no position can be rationally justified – a performatively contradictory assertion if there ever was one.

#### Right – Legitimacy distinction

Praxeology, “The Hoppriori Argument,” http://praxeology.net/unblog05-04.htm

Is premise (4) true? I find it ambiguous. What does it mean for me to deny your exclusive control over your body? I might be denying the fact of your control – or the legitimacy of your control – or your right to exercise such control. These are three different things. For example, suppose you aggress against me; then I can acknowledge the fact that you are exercising control over my body, without acknowledging the legitimacy of your doing so. In the same way, then, I can acknowledge the fact that you are exercising control over your own body without committing myself to the legitimacy of your doing so. Indeed, just as I can engage in activities (e.g., self-defense) that presuppose the fact, though not the legitimacy, of your aggression against me, so I can engage in activities (e.g., argumentative exchange) that presuppose the fact, but not the legitimacy, of your control over your own body. Thus acknowledging the fact need not involve acknowledging the legitimacy. Likewise, acknowledging the legitimacy need not involve acknowledging the right. To say that your action is legitimate is to say that you violate no moral duty in performing the action; but it doesn’t imply – as a right would – that I am morally bound not to interfere with your performance of the action. Suppose a tiger attacks me. I don’t think the tiger is doing anything immoral, since I don’t regard tigers as responsible agents. Hence I grant that the tiger’s attack is legitimate, but I still regard myself as justified in using force to defend myself. Or suppose you and I are shooting hoops, and you try to block my shot. I acknowledge the legitimacy of what you are doing, but I don’t have to let you succeed. In the same way, even if I acknowledge the legitimacy of your exercising control over your own body, that is in principle compatible with my being justified in doing my best to interfere with that control